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THE
REVISED CODES OF IDAHO

VOLUME I

POLITICAL AND CIVIL

PREPARED BY
JOHN F. MacLANE
CODE COMMISSIONER

1908
SYMS-YORK CO., PRINTERS AND BINDERS
BOISE

THE

REVISED CODES OF IDAHO

VOLUME I

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for the benefit of the State of Idaho

PREPARED BY
JOHN F. MACLANE
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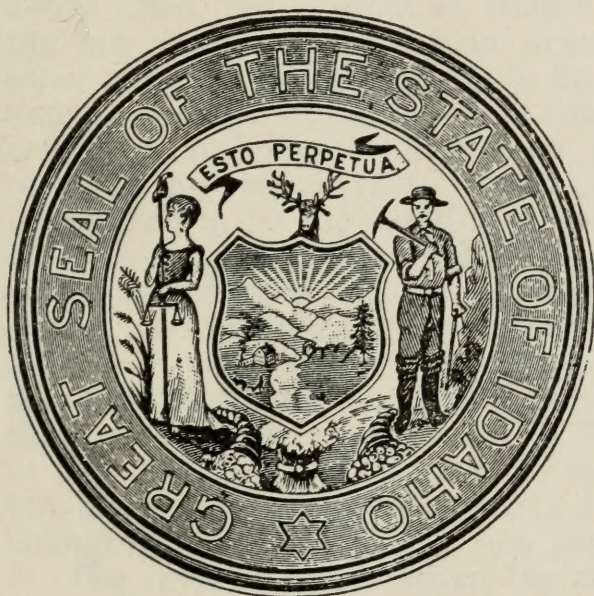
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UNITED STATES OF AMERICA,
STATE OF IDAHO.

I, ROBERT LANSDON, Secretary of State of the State of Idaho, do hereby certify that the following printed Volumes (1 and 2) are a true and literal copy of House Bill No. 1, introduced and passed at the Tenth Session of the Legislature of the State of Idaho and approved by the Governor of said State on the Twelfth day of January A. D. 1909, as appears from the enrolled copy of said House Bill No. 1, now on file in this office; and that the same is published under authority of the State of Idaho.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great Seal of the State. Done at Boise City, the Capital of Idaho, this Twenty-second day of March in the year of our Lord one thousand nine hundred and nine and of the Independence of the United States of America the one hundred and thirty-third.

A handwritten signature in dark ink, appearing to read "Robert Lansdon".

Secretary of State.



PREFACE

The "Revised Codes" embraced in these volumes have been prepared under the authority of an act of the Legislature, approved March 12, 1907, entitled "An Act to provide for the Revision, Compilation and Codification of the Laws of the State of Idaho." The act is set forth at length on pages 75 to 77 of this volume.

Whatever difference of opinion there may be as to the proper scope of an authorized statutory revision under an act such as the one above cited, the wisdom of simply revising and compiling the existing law was so apparent on practical grounds as to exclude every other course. A Revised Code has become an imperative necessity, and while there might be many forceful objections to enacting a code reflecting individual views, there can be none to the mere re-enactment of the present law. These Codes, therefore, contain only what is believed to be the existing law of this State, revised and brought down to date so as to accurately and adequately express the latest will of the Legislature. Obvious grammatical, clerical and typographical errors, and mistakes of punctuation, have been corrected; alterations have been made where a section as originally enacted has been modified by subsequent legislation; provisions ante-dating the Constitution or otherwise inapplicable to the present state of government or of the law have been omitted or modified as circumstances required; but in no case has the legislative function of making new laws or of changing the existing law been usurped.

The revision act required the statutes to be divided into Political, Civil, Civil Procedure and Penal Codes. This method of classification is open to serious objection. The personal equation enters too largely into the problem as thus presented, and subjects which one person would place in one code, another would place in another. This is illustrated in previous compilations of the laws of this State. The chapters concerning "Wills" and "Succession" in 1887 were included in the Code of Civil Procedure, and in 1901 in the Civil Code. Many similar instances will readily occur to every one familiar with our statutes. Attempted logical classifications of the law have been unsatisfactory and have provoked controversy ever since Blackstone wrote his Commentaries, while alphabetical or encyclopedic classifications have universally met with approval. Statutes arranged in the latter method are themselves an index to their contents. There is always an opportunity for difference of opinion, and consequently argument and dissatisfaction, over a division of topics founded on individual preferences, but there can be no dispute over the arbitrary progression of the letters of the alpha-

bet. However, we in this State are perhaps committed to the so-called "Code" system, and in any event such has been foreordained for these codes. Within the limitations thus imposed, and with a view of making a usable and practical, rather than a scholarly classification, the familiar arrangement of the Revised Statutes of 1887 has been adopted. This classification is closely analagous to that of the California Codes, and has been followed with more or less variation in all the States which have followed those Codes. In the present work it has been closely adhered to without any attempt to improve upon it, and often in disregard to personal preferences. In the Civil Procedure and Penal Codes even the title and chapter headings and section numbers are preserved. In the Political and Civil Codes there has been so much new legislation since the Revised Statutes that it was necessary to make several insertions in what seemed to be their appropriate places, and the old section numbers could not be preserved without using a labyrinth of letters in combinations which would frequently have been unintelligible. It has also been necessary to insert several new titles and chapters, and in some cases to change the relative positions of titles and chapters. The chapter on "Funding County Indebtedness" has been transferred from the title of the Civil Code which treats of negotiable instruments to Title 11 of the Political Code concerning "Counties and County Officers." The Police title of the Political Code includes "Inclosures and Trespassing Animals" and "Estrays" which, in the Revised Statutes, constituted separate titles. In contradistinction to the 1901 Codes, the title "Irrigation Districts" has been included in the Political Code, on the theory that such districts are "political divisions of the State which, by the revision act, are required to be included in that Code. Again differing from the 1901 Codes, and in some respects from the Revised Statutes, penal provisions of political, administrative and police laws have been retained in the Political Code with the acts of which they are the sanctionary clauses, instead of being transferred to the Penal Code, where, standing alone, they would be meaningless and must be read in connection with provisions in an entirely different part of the work. In their place in the Penal Code, "cross reference headings" or "false sections" have been inserted, referring to all penal provisions of the law which are not contained in that Code. Provisions creating State offices and boards are included in the same title or chapter with the department of government, institution or branch of law, which the office or board is created to administer or enforce. The details of the classification are adequately explained by the table of contents.

The historical notes give the origin and history of the section and indicate any changes, other than mere clerical or verbal corrections, which have been made, with the reasons therefor. The references to the original and amendatory acts are to the initial page of the act and not to the page on which the section is found, the object being to present as a unit an act which may extend through many sections. The notes to sections taken from the Session Laws of 1888-89 refer to the pages of the edition published by the Smith Printing Co. in 1893, while those to sections from the 1899 laws refer to the pages of the Lewis edition.

The "California Legislation" notes give the corresponding section of the California Codes whenever there is a similar section, and indicate in a general way the points of similarity or difference. References are given to the original Commissioners' Code of 1872, Deering's Code of 1885, and Kerr's Cyclopedic Code of 1905. The latter work cites all the California decisions construing the section. Where there is no similar California legislation and it has been possible, with the means and resources at hand, to find similar statutes of other States, they are referred to under the heading "Comparative Legislation." These latter notes do not pretend to be exhaustive and their absence does not indicate that the Idaho section is *sui generis*, but merely that, in the limited time which could be given to the quest, no similar legislation could be found.

The case notes include all cases decided by the Supreme Court of this State citing or construing the section annotated, through the cases reported in the 12th Idaho, and in addition thereto such cases reported in the 13th Idaho as appeared in the 91st Pacific Reporter. Parallel references are given to the Idaho Reports and to the Pacific Reporter. Federal cases, through 206 U. S. (Bk. 51 L. Ed.) and 153 Fed. Rep., construing sections of our statutes, are also included. The word "Cited" followed by reference to a case indicates that the section has been cited by the court in the case referred to, but that it was not construed, or, if construed, the construction turned principally on some other section under which the full note is given. The year of the decision is given in parentheses so that by inspecting the historical note it can be judged whether or not the decision is applicable to the section since amendments referred to in that note. Dissenting and concurring opinions are also digested, being indicated by the abbreviations "dis. op." and "concur. op.", respectively. Where a Justice expressly dissents from a construction placed on a statute by the opinion, that fact is noted, but no note is made of a general dissent from the judgment of the court. If a case has been expressly overruled it is so stated, but personal opinions as to whether a later decision in effect overrules an earlier one are not interjected.

An index to the Constitution follows that instrument, an index to the Political and Civil Codes is appended to Volume 1, and a complete index to all Codes, including also the Constitution, follows Volume 2. The index to the Political and Civil Codes is an abridgment of the complete index. It refers to every section of those Codes, but duplication is avoided and the sections are only indexed under the main topical head. This abridgment was rendered necessary to keep the bulk of the first volume within bounds. Attention is called to the appendixes to Volume 2 which include: (1) a parallel reference table giving the sections of the Revised Statutes, and pages and sections of the Session Laws, with the corresponding sections of the Codes; (2) a table of repealed and amended laws; (3) the rules of the Supreme Court. Section 17 of the Codes gives a table of all local and special laws preserved in force.

The Justices of the Supreme Court and other State officers have rendered invaluable service in advice and suggestions, which it is impossible to recount in detail. It is here gratefully acknowledged.

In addition acknowledgments are made to Mr. Edwin Snow, Assistant Attorney General, for the compilation of the county boundaries, and assistance in checking over the repealed and omitted laws; to Mr. Herbert Wing, of the State Engineer's office, for assistance with the irrigation laws, and to W. C. Dunbar, Esq., of the Boise Bar, for the notes on the California and comparative legislation. Whatever typographical excellence the books possess is due to the publishers, the Syms-York Company, who have directed every energy towards making them above reproach in that respect.

These Codes are now submitted to the people of the State, in the hope that they may be found accurate and reliable, and to present a complete and systematic compilation of our statutes. To those, if there be any such, who hoped and expected that they would eliminate all difficulties of statutory construction and application, the writer would suggest the advice of Carlyle, "Quit hope of the universal pill." Such a consummation can never be attained until legislative wisdom and foresight can foresee and adequately provide for every complication arising in social and business relations which are constantly growing more complex.

Boise, July 1st, 1908.

JOHN F. MACLANE,
Commissioner.

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INTRODUCTORY MATTERS

MAGNA CHARTA

THE GREAT CHARTER OF LIBERTIES OF KING JOHN, GRANTED AT RUNNYMEDE, JUNE 15, A. D. 1215, IN THE SEVENTEENTH YEAR OF HIS REIGN.

John, by the grace of God, King of England, Lord of Ireland, Duke of Normandy, and Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his Lieges, Greeting: Know ye, that we, in the presence of God, and for the salvation of our own soul, and the souls of our ancestors, and of our heirs, and unto the honor of God and the advancement of Holy Church, and amendment of our realm, by advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope, Brother Aymeric, Master of the Knights Templar in England; and of the Noble Persons, William Mereschal, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan de Galloway, Constable of Scotland, Warin Fitz-Gerald, Peter Fitz-Herbert, and Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip of Albany, Robert de Roppell, John Mareschal, John Fitz-Hugh, and others, our ligemen, have in the first place, granted to God, and by this our present Charter confirmed for us and our heirs forever:

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we shall have them so observed, that it may appear thence, that the freedom of elections which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our charter, and obtained the confirmation of the same from our Lord Pope Innocent III., before the discord between us and our barons, was granted of mere free will which charter we shall observe, and we do will it to be faithfully observed by our heirs forever.

2. We have also granted to all the freemen of our kingdom, for us and for our heirs forever, all the underwritten liberties to be had and holden by them and their heirs, of us and our heirs, forever: If any of our earls, or barons or others, who hold of us in chief by military service, shall die, and at the time of his death, his heirs shall

be of full age, and owes a relief; he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issue to us, or to him to whom we shall assign them; and if we sell or give to anyone the custody of any such lands, and he therein makes destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir when he comes of full age, his whole land, stocked with plows and carriages, according as the time of wainage shall require, and the issue of the land can reasonably bear.

6. His heirs shall be married without disparagement, and so that before matrimony shall be contracted, those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which time her dower shall be assigned.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord whom she holds, if she holds of another.

9. Neither we nor our bailiffs will seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor has sufficient to pay the debt; and if the principal debtor shall fail in the payment of the debt, not having the wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rent of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against said sureties.

10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, or whomsoever he may hold; and if the debt falls into our hands we will take only the chattel mentioned in the deed.

11. And if any one shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessities provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving, however, the services due the lords; and in like manner shall it be done touching debts due to others than the Jews.

12. No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son knight, and once for marrying our eldest daughter; and for these there shall be paid no more than reasonable aid. In like manner it shall be concerning the aids of the city of London.

13. And the city of London shall have all of its ancient liberties and free customs, as well by land as by water; furthermore we will and grant, that all other cities and burroughs, and towns and ports, shall have all their liberties and free customs.

14. And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore we will cause to be summoned generally by our sheriffs and bailiffs, all others who hold us in chief, for a certain day, that is to say forty days before their meeting at least and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be paid only reasonable aid.

16. No man shall be distrained to perform more service for a knight's fee, or other fee tenement than is due from thence.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

18. Trials upon the writ of novel disseisin, and mort d'ancestor, and of darrien presentment, shall not be taken but in their proper counties, and after this manner: We, or, if we should be out of the realm, our chief justiciary, will send two justiciaries through every county four times a year, who, with four knights of each county, chosen by the county, shall hold the said assizes, in the county, on the day and at the place appointed.

19. And if any matters cannot be determined on the day appointed for the holding of the assizes, in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to

decide them, as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small offence, but only after the degree of the offence; and for a great crime according to the heinousness of it, saving to him his contenement; and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by oath of honest men of the neighborhood.

21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offence.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenement shall be distrained to make bridges or banks, unless that anciently of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the crown.

25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without increase, except in our demesne manors.

26. If any one holding of us a lay fee die, and the sheriff, or our bailiffs, show our letters of patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the dead, found upon his lay fee, to the amount of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfill the testament of the dead, and if there be nothing due from his to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church; saving to everyone his debts which the deceased owed to him.

28. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good will of the seller.

29. No constable shall distrain any knight to give money for castle-guard, if he himself will do it in his person, or by another able man in case he cannot do it through any reasonable cause. And if we have carried or sent him into the army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, without the consent of the said freeman.

31. Neither will we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the free.

33. All weirs for the time to come shall be put down in the rivers Thames and Medway, and throughout all England, except upon the sea-coast.

34. The writ, which is called *prascipe*, for the future, shall not be made out to anyone, of any tenement, whereby a freeman may lose his court.

35. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjacks, that is to say, two ells within the lists and it shall be of weights as it is of measures.

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

37. If any do hold of us by the fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage, neither will we have the custody of the fee-farm, socage or burgage, unless knight's service was due us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty by which he holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without creditable witnesses to prove it.

39. No freeman shall be taken or imprisoned, or disseised, or outlawed or banished, or in any way destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

40. To none will we sell, to none will we deny, or delay, right or justice.

41. All merchants shall have safe and secure conduct to go out of, and to come into England, and to stay there, and to pass as well by land as water, for buying and selling by the ancient and allowed customs, without any unjust toils; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of war, they shall be attached without damage to their bodies or goods, until it be known unto us, of our chief justiciary, how our merchants, be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

42. It shall be lawful for the time to come, for any one to go out of our kingdom, and return safely and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be treated as is above mentioned.

43. If any man holds of any escheat, as of the honor of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hand, and are baronies, and die, his heir shall give no other relief and perform no other service to us, that he would do to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it.

44. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or are pledges for any that are attached for something concerning the forest.

45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

46. All barons who have founded abbeys, and have the kings of England's charters or advowson, or the ancient tenure thereof, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time, shall forthwith be disforested; and the same shall be done with the water banks that have been fenced in by us in our time.

48. All evil customs concerning forests, warrens, foresters and warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into in each county by twelve sworn knights of the same shire, chosen by creditable persons of the same county; and within forty days after the said inquest, be utterly abolished so as never to be restored. So as we are first acquainted therewith, or our justiciary, if we be not in England.

49. We will immediately give up all hostages and writings delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from our bailiwicks the relations of Gerard de Athyes, so that for the future they shall have no bailiwick in England; we will also remove Englelard de Cygony, Andrew, Peter and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn and his brothers; Philip Mark and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, cross-bowmen, and stipendaries, who are come with horses and arms to the prejudice of our people.

52. If any one has been dispossessed or deprived by us, without legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry our father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending or whereof an inquest hath been made, by our order, before we undertake the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

53. The same respite we shall have (and in the same manner about administering justice, disafforesting the forests, or letting them continue) for disafforesting the forests, which Henry our father, and our brother Richard have afforested; and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our pilgrimage, or if we tarry at home and do not make our pilgrimage, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty-barons hereinafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty-barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh, of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the Marche by the judgment of their peers; for tenements in England, according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the Marche according to the law of the Marche; the same shall the Welsh do to us and our subjects.

57. As for all those things which a Welshman hath, without the legal judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order before we undertook the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellyn, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of peace.

59. We will treat with Alexander, King of Scots, concerning the restoration of his sisters and hostages, and his rights and liberties, in the same form and manner as we shall do to the rest of the barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us towards all people of our kingdom, as well clergy as laity shall observe as far as they are concerned, towards their dependents.

61. And whereas, for the honor of God and the amendment of our kingdom, and for the better quieting this discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty-barons of the kingdom, whom they think con-

venient; who shall take care, with all their might, to hold and observe and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstances fail in the performance of them, towards any person, or shall break through any of these articles of peace and security and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person and the persons of our queen and children; and when it is redressed they shall obey as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and will distress us jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

62. As for those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered in any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed by the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or cannot, come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will not, by ourselves, or by any other, procure any thing whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other. And all the ill will, indignations and rancour that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive; moreover all trespasses occasioned by the said dissensions, from Easter in the fifteenth year of our reign, till the restoration of peace and tranquility, we hereby entirely remit to all, both clergy and laity, and, as far as in us lies, do

fully forgive. We have, moreover, caused to be made for them the letters patent testimonials of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed, bona fide and without evil subtilty.

Given under our hand in the presence of the witnesses above named and many others, in the meadow called Runnymede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776.—THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither and raising the conditions of new appropriation of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries.

He has created a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us.

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States.

For cutting off our trade with all parts of the world.

For imposing taxes on us without our consent.

For depriving us, in many cases, of the benefits of trial by jury.

For transporting us beyond seas to be tried for pretended offenses.

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government.

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens taken captive on the high seas to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has incited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor.

JOHN HANCOCK.

New Hampshire—JOSIAH BARTLETT, WM. WHIPPLE, MATTHEW THORNTON.

Massachusetts Bay—SAM'L ADAMS, JOHN ADAMS, ROBT. TREAT PAINE, ELDRIDGE GERRY.

Rhode Island—STEP. HOPKINS, WILLIAM ELLERY.

Connecticut—ROGER SHERMAN, SAM'L HUNTINGTON, WM. WILLIAMS, OLIVER WOLCOTT.

New York—WM. FLOYD, PHIL LIVINGSTON, FRANZ LEWIS, LEWIS MORRIS.

New Jersey—RICHD. STOCKTON, JNO. WITHERSPOON, FRANS HOPKINSON, JOHN HART, ABRA. CLARK.

Pennsylvania—ROBT. MORRIS, BENJAMIN RUSH, BENJA. FRANKLIN, JOHN MORTON, GEO. CLYMER, JAS. SMITH, GEO. TAYLOR, JAMES WILSON, GEO. ROSS.

Delaware—CAESAR RODNEY, GEO. READ, THO. M'KEAN.

Maryland—SAMUEL CHASE, WM. PACA, THOS. STONE, CHARLES CARROLL of Carrollton.

Virginia—GEORGE WYTHE, RICHARD HENRY LEE, TH. JEFFERSON, BENJA. HARRISON, THOS. NELSON, JR., FRANCIS LIGHTFOOT LEE, CARTER BRAXTON.

North Carolina—WM. HOOPER, JOSEPH HEWES, JOHN PENN.

South Carolina—EDWARD RUTLEDGE, THOS. HAYWARD, JR., THOMAS LYNCH, JR., ARTHUR MIDDLETON.

Georgia—BUTTON GWINNETT, LYMAN HALL, GEO. WALTON.

CONSTITUTION OF THE UNITED STATES

ADOPTED IN CONVENTION, SEPTEMBER 17, 1787.

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America :

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office or honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress, may at any time by law make or alter such regulations, except as to places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of

either house on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law be presented to the President of the United States. If he approves he shall sign it, but if not he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct tax, shall be laid, unless in proportion to the census enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of profit or trust under the United States, shall be appointed an elector:

[Here followed provisions as to the mode of casting the electoral vote, which are superseded by the Twelfth Amendment.]

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five.

years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following Oath or Affirmation:—"I do solemnly swear [or affirm] that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other Public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for,

and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican form of Government, and shall protect each of them against invasion, and on application of the Legislature, or the Executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth.

IN WITNESS WHEREOF we have hereunto subscribed our names:

GEO. WASHINGTON,
President and Deputy from Virginia.

New Hampshire—JOHN LANGDON, NICHOLAS GILMAN.

Massachusetts—NATHAN GORMAN, RUFUS KING.

Connecticut—WM. SAM'L. JOHNSON, ROGER SHERMAN.

New York—ALEXANDER HAMILTON.

New Jersey—WIL. LIVINGSTON, DAVID BREARLEY, WM. PATTERSON, JONA DAYTON.

Pennsylvania—B. FRANKLIN, THOMAS MIFFLIN, ROBT. MORRIS, GEO. CLYMER, THO. FITZSIMMONS, JARED INGERSOLL, JAMES WILSON, GOUV. MORRIS.

Delaware—GEO. READ, RICHARD BASSETT, JOHN DICKENSON, GUNNING BEDFORD, JR., JACO. BROOM.

Maryland—JAMES MCHENRY, DANL. CARROLL, DAN. OF ST. THO. JENIFER.

Virginia—JOHN BLAIR, JAMES MADISON, JR.

North Carolina—WM. BLOUNT, HU. WILLIAMSON, RICHD. DOBBS SPAIGHT.

South Carolina—J. RUTLEDGE, CHARLES PINCKNEY, CHARLES COTESWORTH PINCKNEY, PIERCE BUTLER.

Georgia—WILLIAM FEW, ABR. BALDWIN.

ATTEST: WILLIAM JACKSON, *Secretary*.

ARTICLES

IN ADDITION TO, AND AMENDATORY OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

Proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the free-

dom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III. .

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens of subjects of any foreign State.

ARTICLE XII.

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make a distinct list of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other Constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such

number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall chose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person Constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this Article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law including debts incurred for payment of pensions

and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ORGANIC ACT OF THE TERRITORY OF IDAHO

AN ACT

TO PROVIDE A TEMPORARY GOVERNMENT FOR THE TERRITORY OF IDAHO.

Section

1. Territory of Idaho; boundaries.
2. Executive power, Governor, etc.
3. Secretary, when to act as Governor.
4. Legislative power, what constitutes, length of session, etc.
5. Voters at first election.
6. Veto power of governor, taxes, etc.
7. District, county, or township officers.
8. Members of assembly, who may be.
9. Judicial power, with whom vested.

Section

10. Territorial officers, appointment of, salaries, pay of.
11. Members of assembly, session of, etc.
12. Seat of government, delegate, Constitutional laws, etc.
13. Delegate in Congress; how elected, and qualifications of electors, etc.
14. Public lands, school sections.
15. Judicial districts and judges.
16. Officers to give bonds.
17. Treaties with Indians, agencies, etc.

Be It Enacted by the Senate and House of Representatives of the United States in Congress assembled, That all that part of the territory of the United States included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake River where the northern boundary of Oregon intersects the same; then follow down the said channel of Snake River to a point opposite the mouth of Kooskooskia, or Clearwater River; thence due north to the forty-ninth parallel of latitude; thence east along said parallel to the twenty-seventh degree of longitude west of Washington; thence south along said degree of longitude to the northern boundary of Colorado Territory; thence west along said boundary to the thirty-third degree of longitude west of Washington; thence north along said degree to the forty-second parallel of latitude; thence west along said parallel to the eastern boundary of the State of Oregon; thence north along said boundary to the place of the beginning. And the same is hereby created into a temporary government, by the name of the Territory of Idaho: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory or changing its boundaries in such manner and at such time as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided, further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such right shall remain inextinguished by treaty between the United States and such

Indians, or include any territory, which, by treaty with the Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Idaho, until said tribe shall signify their assent to the President of the United States to be included within said Territory, or to affect the authority of the Government of the United States, to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the Government to make if this Act had never been passed.

Section 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Idaho shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia, and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said Territory, and reprieve for offenses against the laws of the United States until the decision of the President of the United States can be made known thereof; he shall commission all officers who shall be appointed to office under the laws of said Territory, and shall take care that the laws be faithfully executed.

Section 3. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and shall hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives for the use of Congress; and in case of the death, removal, resignation, or absence of the Governor from the Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

Section 4. *And be it further enacted*, That the legislative power and authority of said Territory shall be vested in the Governor and Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of seven members having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall at its first session, consist of thirteen members possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue one

year. The number of Representatives may be increased by the Legislative Assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the Council, in like manner, to thirteen. An apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as the Governor shall designate and appoint, and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and may be conducted in such manner both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this Act. The persons having the highest number of legal votes in each of said Council districts for members of the Council shall be declared by the Governor to be duly elected to the Council and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of said House: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

Section 5. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall have been an actual resident of said Territory at the time of the passage of this Act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly.

Section 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this Act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the

property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it becomes a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return; in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said Territory by an Act of Congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

Section 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Idaho. The Governor shall nominate and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for, and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

Section 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

Section 9. *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of

said districts by one of the justices of the supreme court at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and justices of the peace, shall be limited by law: *Provided*, That justices of the peace shall have no jurisdiction of any matter in controversy when the title or boundaries of any land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Court of the United States, where the value of the property of the amount in controversy, to be ascertained by the oath or affirmation of either party or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the said supreme court created by this Act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeal in all cases shall be made to the supreme court of said Territory, the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington Territory now receive for similar services.

Section 10. *And be it further enacted*, That there shall be appointed an attorney for said Territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Washington. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as Circuit and District

Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the District Court of the United States for the present Territory of Washington and shall, in addition be paid two hundred dollars annually as a compensation for extra services.

Section 11. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal, shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The Governor and Secretary to be appointed as aforesaid, shall, before they act as such respectively, take an oath or affirmation, before the district judge or some justice of the peace in the limits of said Territory, duly authorized to administer oaths or affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificate shall be received and recorded by the said Secretary among the executive proceedings; and the Chief Justice and the Associate Justices, and all civil officers in said Territory, before they act as such shall take a like oath or affirmation before the said Governor or Secretary, or some judge or justice of the peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars, the Chief Justice and Associate Justices shall receive an annual salary of two thousand five hundred dollars, the Secretary shall receive an annual salary of two thousand dollars; the said salaries shall be paid quarter-yearly from the dates of the respective appointments, at the Treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive four dollars each per day during their attendance at the sessions thereof and four dollars each for every twenty miles traveled in going to and returning from said sessions, estimated according to the nearest usually traveled route, and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the Legislative Assembly annually, unless on an extraordinary occasion, the Governor shall think proper to call the Legislative Assembly together. There shall be appropriated annually the usual sum to be expended by the Governor to defray

the contingent expenses of the Territory, including the salary of the clerk of the executive department; and there shall also be appropriated annually a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States to defray the expenses of the Legislative Assembly, the printing of the laws and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instruction of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid moneys shall have been expended, and no expenditure shall be made by the Legislative Assembly for objects not specially authorized by the Acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Section 12. *And be it further enacted*, That the Legislative Assembly of the Territory of Idaho shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible: *Provided*, That the seat of government fixed by the Governor and Legislative Assembly shall not be at any time changed, except by an Act of the said Assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

Section 13. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner as the Governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said Territory of Idaho as elsewhere within the United States.

Section 14. *And be it further enacted*, That when the lands in the Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

Section 15. *And be it further enacted,* That until otherwise provided by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Section 16. *And be it further enacted,* That all officers to be appointed by the President of the United States, by and with the advice and consent of the Senate, for the Territory of Idaho, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be entrusted with them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

Section 17. *And be it further enacted.* That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the Territory embraced within the provisions of this Act, shall be faithfully and rigidly observed, anything contained in this Act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the offices of said agencies or superintendencies.

Approved, March 3rd, 1863.

REVISED STATUTES OF THE UNITED STATES

TITLE XXIII.—THE TERRITORIES.

CHAPTER ONE.

PROVISIONS COMMON TO ALL THE TERRITORIES.

Section

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- 1840. Authority to regulate Indians; jurisdiction of Indians.
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- 1843. Secretary.
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- 1893. Rules for the government of penitentiaries.
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Sec. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the Territorial limits, or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.

Sec. 1840. Nor shall anything in this Title be construed to affect the authority of the United States to make any regulation respecting the Indians of any Territory, their lands, property, or rights, by treaty, law or otherwise, in the same manner as might be made if no temporary government existed or is hereafter established, in any such Territory.

Sec. 9. That immediately upon and after the date of the passage of this act, all Indians committing against the person or property of another Indian, or other person, any of the following crimes, namely: Murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States. (Act March 3, 1885.)

Sec. 1841. The executive power of each Territory shall be vested in a Governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and repites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

Sec. 1842. Every bill which has passed the Legislative Assembly of any Territory shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that

house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of such house. If any bill is not returned by the Governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislative Assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law.

Sec. 1843. There shall be appointed a Secretary for each Territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. In case of death, removal, resignation or absence of the Governor from the Territory, the Secretary shall execute all the powers and perform all the duties of Governor, during such vacancy, or absence, or until another Governor is appointed and qualified.

Sec. 1844. The Secretary shall record and preserve all the laws and proceedings of the Legislative Assembly, and all the acts and proceedings of the Governor in the executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly, within thirty days after the end of each session thereof, to the President, and two copies of the laws, within like time, to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President. He shall prepare the acts passed by the Legislative Assembly for publication, and furnish a copy thereof to the public printer of the Territory, within ten days after the passage of each act.

And hereafter it shall be the duty of the Secretary of each Territory to furnish estimates in detail for the lawful expenses thereof, to be presented to the Secretary of the Treasury on or before the first day of October of every year. [Act, June 20, 1874.]

Sec. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the Governors of the several Territories shall be three thousand five hundred dollars, and the salaries of the Secretaries shall be two thousand five hundred dollars each.

Sec. 1846. The Legislative power in each Territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The members of both branches of the Legislative Assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective Legislative Assemblies shall be biennial. Each Legislative Assembly shall fix by law the day of the commencement of its regular sessions. The members of the Council and the House of Representatives shall reside in the district or county for which they are respectively elected.

Sec. 1847. Previous to the first election for members of the Legislative Assembly of a Territory in which Congress may hereafter provide a temporary government, the Governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintended such election and the returns thereof, as the Governor may direct; and he shall, at the same time, declare the number of members of the Council and the House of Representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular territory. The persons having the highest number of legal votes in each of the districts for members of the Council, shall be declared by the Governor to be duly elected to the Council, and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of that House; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor appoints.

Sec. 1848. After such first election, however, the time, place and manner of holding elections by the people in any newly created Territory, as well as of holding all such elections in Territories now organized, shall be prescribed by the laws of each Territory.

Sec. 1849. The apportionment of representation, which the Governor is authorized to make by section eighteen hundred and forty-seven, in the case of a Territory hereafter erected by Congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new Territory, as well as in all Territories now organized, the Legislative Assemblies, respectively, may re-adjust and apportion the representation of the two houses, thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper; but the number of either house, as authorized by law, shall not be increased.

Sec. 1850. All laws passed by the Legislative Assembly and Governor of any Territory except in the Territories of Colorado, Dakota, Idaho, Montana and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

Sec. 1851. The legislative power of every Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

Sec. 1852. The sessions of the Legislative Assemblies of the several Territories of the United States shall be limited to sixty days' duration. [Act. Dec. 23, 1880.]

That from and after the adjournment of the next session of the several Territorial Legislatures the Council of each of the Territories of the United States shall not exceed twelve members, and the House of Representatives of each shall not exceed twenty-four members, and the members of each branch of the said several Legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides.

And the President of the Council and the Speaker of the House of Representatives shall each receive six dollars per day for the same time.

And the several Legislatures at their next sessions are directed to divide their respective Territories into as many Council and Representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed":

Provided, The number of Council districts shall not exceed twelve, and the Representative districts shall not exceed twenty-four in any one of said Territories, and all parts of sections eighteen hundred and forty-seven; eighteen hundred and forty-nine; eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed. [Act June 19, 1878.]

Sec. 1854. No member of the Legislative Assembly of any Territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly in any Territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of any Territory. The exception of postmasters shall not apply to the Territory of Washington.

Sec. 1855. No law of any Territorial Legislature shall be made or enforced, by which the Governor or Secretary of a Territory, or the members or officers of any Territorial Legislature are paid any compensation other than that provided by the laws of the United States.

Provided, That for the performance of all official duties imposed by the Territorial Legislatures, and not provided for in the organic act, the Secretaries of the Territories respectively shall be allowed such fees as may be fixed by the Territorial Legislatures. [Act June 19, 1878.]

Sec. 1856 Justices of the peace and all general officers of the militia, in the several Territories, shall be elected by the people, in such manner as the respective Legislatures may provide by law.

Be it enacted, etc. (Sec. 1.) That when from any cause there shall be a vacancy in the office of justice of the peace in any of the Territories of the United States, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the Governor and Legislative Assembly of such Territory:

Provided, That such appointee, or person elected to fill such vacancy, shall hold office only until his successor shall be regularly elected and qualified as provided by law. [Act April 16, 1880.]

Sec. 1857. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the Governor and Legislative Assembly of each Territory; and all other officers not herein otherwise provided for, the Governor shall nominate, and by and with the advice and consent of the Legislative Council of each Territory, shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the Governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the Legislative Assembly.

Sec. 1858. In any of the Territories, whenever a vacancy happens from resignation or death, during the recess of the Legislative Council, in any office which, under the Organic Act of any Territory, is to be filled by appointment of the Governor, by and with the advice and consent of the Council, the Governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislative Council.

Sec. 1859. Every male citizen above the age of twenty-one including persons who have legally declared their intention to become citizens of any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

Sec. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the Legislative Assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States, above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

Second. There shall be no denial of the elective franchise, or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United

States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any Territory, except officers of the army on the retired list. [Act March 3, 1883.]

Sec. 1861. That the subordinate officers of each branch of said Territorial Legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day.

Said sums shall be paid only during the sessions of said Legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any Territory. [Act June 19, 1878.]

Sec. 1862. Every Territory shall have the right to send a delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the Legislative Assembly thereof. The person having the greatest number of voters shall be declared by the Governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

Sec. 1863. The first election of a Delegate in any Territory for which a temporary government is hereafter provided by Congress, shall be held at the time and places, and in the manner the Governor of such Territory may direct, after at least sixty days notice, to be given by proclamation; but at all subsequent elections therein for a Delegate, as well as at all elections for a Delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory.

Sec. 1864. The Supreme Court of every Territory shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the Territory for which they are respectively appointed.

Sec. 1865. Every Territory shall be divided into three Judicial Districts; and a District Court shall be held in each district of the Territory by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law; and each Judge, after assignment, shall reside in the district to which he is assigned.

Sec. 1866. The jurisdiction both appellate and original, of the courts provided for in section 1907 and 1908, shall be limited by law.

Sec. 1867. No justices of the peace in any territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

Sec. 1868. The Supreme Court and the District Courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction.

WHEREAS, by the organic Acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceedings, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic Acts respectively: Therefore,

Be it enacted, etc., That it shall not be necessary in any of the courts of the several Territories of the United States, to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said Territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceedings in all cases whether legal or equitable, be confirmed; and that all proceedings, heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be and the same are hereby, validated and confirmed: *Provided,* That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law. [Act April 7, 1874.]

Sec. 1869. Write of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the District Courts to the Supreme Courts, of all the Territories, respectively, under such regulations as may be prescribed by law, but in no case removed to the Supreme Court, shall trial by jury be allowed in that Court.

Sec. 1870. The Supreme Court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the Court for which he is appointed.

Sec. 1871. Each Judge of the Supreme Court of the respective Territories shall designate and appoint one person as Clerk of the District over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such District Clerk shall be entitled to a compensation from the United States.

Sec. 1872. Every District Clerk shall be also the register in chancery, and shall reside and keep his office at the place where the Court is held.

Sec. 1873. Temporarily, and until otherwise provided by law, the Governor of every Territory, which may be hereafter established, shall define, by proclamation, the judicial districts of such Territory, and assign the judges appointed for such Territory, to the several districts, as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

Sec. 1874. The Judges of the Supreme Court of each Territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the Territory, courts have been or may be established; for the purpose of hearing and determining all matters and causes, except those in which the United States is a

party; but the expense of holding such courts shall be paid by the Territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

Sec. 1875. There shall be appointed in each Territory a person learned in law, to act as Attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Sec. 1876. There shall be appointed a Marshal for each Territory. He shall execute all process issuing from the Territorial courts when exercising their jurisdiction as Circuit and District Courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law, on the Marshals of the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Sec. 1877. The Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal of every Territory shall be nominated, and by and with the advice and consent of the Senate, appointed by the President.

Sec. 1878. The Governor and Secretary for each Territory shall, before they act as such, respectively take an oath before the District Judge, or some justice of the peace in the limits of the Territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the Secretary among the executive proceedings; and the Chief Justice and the Associate Justices, and all other civil officers appointed for any Territory, before they act as such, shall take a like oath before the Governor or Secretary, or some Judge or Justice of the Peace of the Territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the Secretary, to be, by him, recorded as above directed; but after the first qualification of the officers herein specified in the case of a new Territory, as well as in all organized Territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each Territory.

Hereafter payment of salaries of all officers of the Territories of the United States appointed by the President, shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such Territory; and said oath shall hereafter be administered in the Territory in which such office is held. [Act May 1, 1876.]

Sec. 1879. The annual salary of the Chief Justice and Associate Justices of all the Territories now organized, shall be three thousand dollars each.

Sec. 1880. The salary of the Attorney of the United States for

each Territory, shall be at the rate of two hundred and fifty dollars annually.

Sec. 1881. The salary of the Marshal of the United States for each Territory, shall be at the rate of two hundred dollars a year.

Sec. 1882. The salaries provided for in this Title, to be paid to the Governor, Secretary, Chief Justices and Associate Justices, District Attorney and Marshal of the several Territories, shall be paid quarter-yearly at the Treasury of the United States.

That hereafter the salaries appropriated for the United States Judges in the foregoing paragraphs, and judges of the court of claims, and of the Territories, may be paid monthly. [Act March 3, 1881.]

Sec. 1883. The fees and costs to be allowed to the United States Attorneys and Marshals, to the Clerks of the Supreme and District Courts, and to jurors, witnesses, commissioners, and printers, in the Territories of the United States, shall be the same for similar services by such persons as prescribed in chapter sixteen, Title "The Judiciary," and no other compensation shall be taxed or allowed.

Sec. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasurer, to be filed in his office.

Sec. 1885. The Legislative Assembly of every Territory hereafter organized shall hold its first session at such time and place in the Territory as the Governor thereof shall appoint and direct; and at the first session of the Legislative Assembly, or as soon thereafter as it may be deemed expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for the Territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the Governor and Legislative Assembly.

Sec. 1886. All accounts for disbursements, in the Territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the Treasury Department; and no Act, Resolution or order of the Legislature of any Territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the Treasury. No payment shall be made or allowed, unless the Secretary of the Treasury has estimated therefor and the object been approved by Congress. No session of the Legislature of a Territory shall be held until the appropriation for its expenses has been made.

Sec. 1887. Hereafter no expense for printing exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the Legislature of any of the Territories.

And in no case shall the expenditure for public printing in any of the Territories exceed the sum of two thousand five hundred dollars for any one year. [Act June 19, 1878.]

Sec. 1888. No Legislative Assembly of a Territory shall, in any instance or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

Be it enacted, etc., That the Legislatures of the Territories of the United States now, or hereafter to be organized, shall not pass *local or special laws* in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the *names* of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town-plats, streets, alleys and public grounds.

Locating or changing *county seats*.

Regulating *county* and *township* affairs.

Regulating the *practice in courts* of justice.

Regulating the jurisdiction and duties of *justices of the peace*, police magistrates, and *constables*.

Providing for changes of *venue* in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or *amending the charter* of any town, city, or village.

For the *punishment* of crimes or misdemeanors.

For the *assessment and collection of taxes* for Territorial, county, township, or road purposes.

Summoning and impaneling grand or petit *jurors*.

Providing for the management of common *schools*.

Regulating the rate of *interest* on money.

The opening and conducting of any *election* or designating the place of voting.

The sale or mortgage of *real estate* belonging to *minors* or others under disability.

The protection of *game or fish*.

Chartering or licensing *ferries or toll bridges*.

Remitting fines, penalties, or forfeitures.

Creating, increasing or decreasing *fees*, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

Changing the law of *descent*.

Granting to any corporation, association, or individual the right to lay down *railroad tracks*, or amending existing charters for such purposes.

Granting to any corporation, association, or individual any *special or exclusive privilege, immunity, or franchise* whatever.

In all *other cases where a general law can be made applicable*, no special law shall be enacted in any of the Territories of the United States by the Territorial Legislatures thereof.

Sec. 2. That no Territory of the United States now or hereafter to be organized, or any political or municipal corporation or subdivision of any such Territory, shall hereafter make any

subscription to the capital stock of any incorporated company, or company or association having corporate powers, or in any manner loan its credit to, or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association.

Sec. 3. That no law of any Territorial Legislature shall authorize any *debt to be contracted* by or on behalf of such Territory except in the following cases: To meet a *casual deficit* in the revenues, to pay the *interest* upon the Territorial debt, to suppress *insurrections*, or to provide for the public *defense*, except that in addition to any indebtedness created for such purposes the Legislature may authorize a *loan* for the erection of *penal, charitable or educational* institutions for such Territory, if the total indebtedness of the Territory is not thereby made to exceed *one* per centum upon the assessed value of the taxable property in such Territory as shown by the last general assessment for taxation. And nothing in this Act shall be construed to prohibit the *refunding* of any existing indebtedness of such Territory or of any political or municipal corporation, county or other subdivision therein.

Sec. 4. That no political or municipal corporation, county or other subdivision, in any of the Territories of the United States, shall ever become *indebted in any manner or for any purpose* to any amount in the aggregate, *including existing indebtedness*, exceeding *four* per centum on the value of the taxable property within such corporation, county, or subdivision, to be ascertained by the last assessment for Territorial and county taxes previous to the incurring of such indebtedness; and all *bonds or obligations* in excess of such amount given by such corporation shall be *void*. That nothing in this Act contained shall be so construed as to affect the validity of any Act of any Territorial Legislature heretofore enacted, or of any obligations existing or contracted thereunder, nor to preclude the issuing of bonds already contracted for in pursuance of express provisions of law; nor to prevent any Territorial Legislature from legalizing the acts of any county, municipal corporation, or subdivision of any Territory as to any bonds heretofore issued or contracted to be issued.

Sec. 1889. The Legislative Assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation Acts, permit persons to associate themselves together as bodies corporate, for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue), loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association.

Sec. 6. That nothing in this Act contained shall be construed to abridge the power of Congress to annul any law passed by a Territorial Legislature or to modify any existing law of Con-

gress requiring in any case that the laws of any Territory shall be submitted to Congress.

Sec. 7. That all Acts and parts of Acts hereafter passed by any Territorial Legislature in conflict with the provisions of this Act shall be null and void. [Act July 30, 1886.]

Sec. 1890. No corporation or association, for religious or charitable purposes, shall acquire or hold real estate in any Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Sec. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States.

Sec. 2. That the penitentiaries in the Territories of Montana, Idaho, and Wyoming, shall continue under the care and control of the Marshal of the United States for said Territories, under and pursuant to the provisions of the act entitled, "An Act in relation to certain Territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last mentioned act is hereby revived and re-enacted so far as the same applies to the Territories of Montana, Idaho and Wyoming. [Act June 20, 1874.]

Sec. 1893. The Attorney General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the Marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the Marshal and his deputies, for their services under such regulations, shall be fixed by the Attorney General.

Sec. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of the fund for defraying the expenses of suits in which the United States are concerned, and of the prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Sec. 1895. Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

Be it enacted, etc., That the Legislative Assemblies of the several Territories of the United States may make such provision for the care and custody of such persons as may be convicted of crime under the laws of such Territory as they shall deem proper,

and for that purpose may authorize and contract for the care and custody of such convicts in any other Territory or State, and provide that such person or persons may be sentenced to confinement accordingly in such Territory or State, and all existing legislative enactments of any of the Territories for that purpose are hereby legalized: *Provided*, That the expense of keeping such prisoners shall be borne by the respective Territories, and no part thereof shall be borne by the United States. [Act June 16, 1880.]

Be it enacted, etc., That the nature of alcoholic drinks and narcotics, and special instructions as to their effect upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools, and in the military and naval schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of text books in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States.

Sec. 2. That it shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent or teacher who shall refuse or neglect to comply with the requirements of this Act, or shall neglect or fail to make proper provisions for the instruction required, and in the manner specified by the first section of this Act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases.

Sec. 3. That no certificate shall be granted to any person to teach in the public schools of the District of Columbia or Territories, after the first day of January, anno Domini eighteen hundred and eighty-eight, who has not passed a satisfactory examination in physiology and hygiene, with special reference to the nature and the effects of alcoholic drinks and other narcotics upon the human system. [Act May 20, 1886.]

CHAPTER TWO.

OF PROVISIONS CONCERNING PARTICULAR ORGANIZED TERRITORIES.

Section	Section
1902. Boundaries of Idaho.	1909. Writs of error to United States Supreme Court.
1905. Elections in Washington and Idaho.	1910. Jurisdiction of District Courts.
1906. The Delegate to Congress must be a citizen of the United States.	1914. Judges of Supreme Courts in Idaho and Montana to define judicial districts, etc.
1907. The judicial power, how vested in all the Territories except Arizona.	1923. Extra session of Legislative Assembly in Washington, Idaho and Montana.

Section

1927. Jurisdiction of justices of the peace.
 1935. Contingent expenses of certain Territories.
 1940. In Washington, Idaho and Montana.
 1941. No payment of salaries in certain Territories until officers enter on their duties.
 1943. In Idaho and Montana; mileage of members.

Section

1945. In Idaho and Montana, seat of government.
 1946. School lands in certain Territories.
 1949. Agencies, etc., continued.
 1951. Disbursing officers in Washington, Idaho and Montana, to give security.

Sec. 1902. All that part of the territory of the United States, included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake River, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake River to a point opposite the mouth of the Kooskooskia or Clear Water River; thence due north to the forty-ninth parallel of latitude; thence east along that parallel, to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root Mountains; thence southward along the crest of the Bitter Root Mountains till its intersection with the Rocky Mountains; thence southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west, along that parallel, to the eastern boundary of the State of Oregon; thence north, along that boundary to the place of beginning, is created into a temporary government by the name of the Territory of Idaho.

Sec. 1905. The elections in the Territories of Washington and Idaho for Delegates to the House of Representatives shall be held biennially, on the Tuesday next following the first Monday in November; and all elective Territorial, county and precinct officers shall hereafter be elected at the times herein specified, unless otherwise provided by legislation subsequent hereto, in either of such Territories.

Sec. 1906. The Delegate to the House of Representatives from each of the Territories of Washington, Idaho and Montana, must be a citizen of the United States.

Sec. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming, shall be vested in a Supreme Court, District Courts, probate courts, and in justices of the peace.

Be it enacted, etc., That the probate courts of the Territory of Idaho, in their respective counties, in addition to their probate jurisdiction, be, and they are hereby, authorized to hear and determine all civil causes wherein the damage or debt claimed does not exceed the sum of five hundred dollars, exclusive of interest, and such criminal cases, arising under the laws of the Territory as do not require the intervention of a grand jury: *Provided*, That they shall not have jurisdiction in any matter in controversy, when the title, boundary, or right to the peaceable possession of land may be in dispute, or in chancery or divorce cases: *And, provided further*, That in all cases an appeal may

be taken from any order, judgment, or decree of said probate courts to the District Court. [Act December 13, 1870.]

Sec. 1909. Writs of error and appeals from the final decisions of the Supreme Court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the Supreme Courts created by this title, or of any Judge thereof, or of the District Courts created by this title, or of any Judge thereof, upon writs of *habeas corpus* involving the question of personal freedom.

Be it enacted, etc., That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

Sec. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copy-right, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute. [Act March 3, 1885.]

Sec. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgment and decree of said Territorial courts, in cases of trial by jury, shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed, or may hereafter prescribe: *Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate court may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this Act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed. [Act April 7, 1874.]

Sec. 1910. Each of the District Courts in the Territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United

States, as is vested in the Circuit and District Courts of the United States; and the first six days of every term of the respective District Courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the Supreme Court of each Territory, as in other cases.

Sec. 1914. The Judges of the Supreme Courts of the Territories of Idaho and Montana, or a majority of them, shall, when assembled at their respective seats of government, define the judicial districts of each of such Territories, and assign the Judges who may be appointed for each of such Territories to the several districts; and shall also fix the times and places for holding courts in the several *counties or subdivisions* in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court in the Territory of Montana.

Sec. 1923. In each of the Territories of Washington, Idaho, and Montana, the Governor shall have power to call the Legislative Assembly together by proclamation, on an extraordinary occasion at any time.

Hereafter no extraordinary session of the Legislature of any Territory, wherever the same is now authorized by law, shall be called, until the reasons for the same have been presented to the President of the United States, and his approval thereof has been duly given. [Act June 22, 1874.]

Sec. 1927. Justices of the peace in the Territories of Colorado, Washington, Idaho, Montana and Arizona, shall not have jurisdiction of any matter in controversy where the debt or sum claimed, exceeds three hundred dollars. [Act January 19, 1883.]

Sec. 1935. There shall be appropriated annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, including the salary of the clerks in the executive departments of those Territories.

Sec. 1940. There shall be appropriated, respectively for the Territories of Washington, Idaho and Montana, annually, a sufficient sum, to be expended by the Secretary of each Territory herein named upon an estimate to be made by the Secretary of the Treasury, to defray the expenses of the Legislative Assembly, and other incidental expenses. The Governor and Secretary of each Territory above specified shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury, and shall semi-annually, account to such Secretary for the manner in which such sums of money have been expended.

Sec. 1941. No payment of salary shall be made to the Governor, Secretary, Chief Justice, and Associate Justices of Washington, Idaho and Montana Territories until such officers have entered upon the duties of their respective appointments.

Sec. 1943. The members of the Legislative Assembly of Idaho and Montana Territories shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of

their respective bodies, estimated according to the nearest usually traveled route.

Sec. 1945. The Seat of government, when once fixed by the Governor and Legislative Assembly of Idaho and Montana, respectively, shall not be at any time changed, except by an Act of such Assembly, for each Territory, respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

Sec. 1946. Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming shall be reserved for the purpose of being applied to schools in the several Territories herein named and in the States and Territories hereafter to be erected out of the same.

Sec. 1949. The existing agencies and superintendencies of the Indians inhabiting the Territories of Idaho and Montana shall be continued with the same powers and duties now prescribed by law, except that the President may, at his discretion, change the location of the office of such agents or superintendents.

Sec. 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territories of Washington, Idaho, and Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give security at such time and in such manner as the Secretary of the Treasury may prescribe.

IDAHO ADMISSION BILL

(Public 199)

AN ACT

TO PROVIDE FOR THE ADMISSION OF THE STATE OF IDAHO INTO THE UNION.

WHEREAS, The people of the Territory of Idaho, did, on the 4th day of July, 1889, by a convention of delegates called and assembled for that purpose, form for themselves a Constitution, which Constitution was ratified and adopted by the people of said Territory at an election held therefor on the first Tuesday in November, 1889, which Constitution is republican in form, and is in conformity with the Constitution of the United States; and,

WHEREAS, Said convention and the people of said Territory have asked the admission of said Territory into the Union of States on an equal footing with the original States in all respects whatever. Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Idaho is hereby declared to be a State of the United States of America, and is hereby declared admitted into the Union on an equal footing with the original States in all respects whatever; and that the Constitution which the people of Idaho have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed.

Section 2. That the said State shall consist of all the territory described as follows: Beginning at the intersection of the thirty-ninth meridian with the boundary line between the United States and the British possessions; then following said meridian south until it reaches the summit of the Bitter Root Mountains; thence southeastward along the crest of the Bitter Root range and the Continental divide until it intersects the meridian of thirty-four degrees of longitude; thence southward on this meridian to the forty-second parallel of latitude; thence west on this parallel of latitude to its intersection with a meridian drawn through the mouth of the Owyhee river; north on this meridian to the mouth of the Owyhee river; thence down the mid-channel of the Snake River to the mouth of the Clearwater River; and thence north on the meridian which passes through the mouth of the Clearwater to the boundary line between the United States and the British possessions, and east on said boundary line to the place of beginning.

Sec. 3. That until the next general census, or until otherwise provided by law, said State shall be entitled to one Representative in the House of Representatives of the United States, and the election

of the Representative to the Fifty-first Congress and Fifty-second Congress shall take place at the time, and be conducted and certified in the same manner as is provided in the Constitution of the State for the election of State, district, and other officers in the first instance.

The law of the Territory of Idaho for the registration of voters shall apply to the first election of State, district, and other officers held after the admission of the State of Idaho. County and precinct officers elected at the first election held after the admission of the State of Idaho shall assume the duties of their respective offices on the second Monday of January, 1891.

Sec. 4. That sections numbered 16 and 36 in every township of said State, and where such sections or any parts thereof, have been sold or otherwise disposed of by or under the authority of any Act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the Legislature may provide, with the approval of the Secretary of the Interior.

Sec. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the Legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Sec. 6. That fifty sections of the unappropriated public lands within said State, to be selected and located in legal subdivisions as provided in Section 4 of this Act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the Capital of said State for legislative, executive, and judicial purposes.

Sec. 7. That 5 per cent. of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

Sec. 8. That the lands granted to the Territory of Idaho by the Act of February 18, 1881, entitled "An Act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming, for university purposes," are hereby vested in the State of Idaho to the extent of the full quantity of 72 sections to said State, and any portion of said lands that may not have been selected by said Territory of Idaho may be selected by the said State; but said Act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said State, and the in-

come thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this Act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

Sec. 9. That the penitentiary at Boise City, Idaho, and all lands connected therewith, and set apart and reserved therefor, and unexpended appropriations of money therefor, and the personal property of the United States now being in the Territory of Idaho which has been in use in said Territory in the administration of the Territorial government, including books and records and the property used at the Constitutional convention which convened at Boise City in the month of July, 1889, are hereby granted and donated to the State of Idaho.

Sec. 10. That 90,000 acres of land, to be selected and located as provided in Section 4 of this Act, are hereby granted to said State for the use and support of an agricultural college in said State, as provided in the Acts of Congress making donations of lands for such purposes.

Sec. 11. That in lieu of the grant of land for purposes of internal improvement made to the new States by the eighth section of the Act of September 4, 1841, which section is hereby repealed as to the State of Idaho, and in lieu of any claim or demand by the said State under the Act of September 28, 1850, and Section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant is hereby declared, is not extended to the State of Idaho, and in lieu of any grant of saline lands to said State, the following grants of land are hereby made, to-wit: To the State of Idaho: For the establishment and maintenance of a scientific school, 100,000 acres; for State normal schools, 100,000; for the support and maintenance of the insane asylum, located at Blackfoot, 50,000 acres; for the support and maintenance of the State university, located at Moscow, 50,000; for the support and maintenance of the penitentiary, located at Boise City, 50,000 acres; for other State, charitable, educational, penal and reformatory institutions, 150,000 acres. None of the lands granted by this Act shall be sold for less than \$10 an acre.

Sec. 12. That the State of Idaho shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purpose herein mentioned, in such manner as the Legislature of the State may provide.

Sec. 13. That all mineral lands shall be exempted from the grants by this Act. But if section 16 and 36, or any subdivision, or portion of any smallest subdivision, thereof, in any township, shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State, in lieu thereof, for the use and the benefit of the common schools of said State.

Sec. 14. That all lands granted in quantity or as indemnity by this Act shall be selected, under the direction of the Secretary of the Interior, from the surveyed unreserved, and unappropriated public lands of the United States, within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this Act for the specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects.

Sec. 15. That the sum of \$28,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial Legislatures, and for elections held therefor and thereunder. Any money hereby appropriated not necessary for such purposes shall be covered into the Treasury of the United States.

Sec. 16. That the said State shall constitute a judicial district, the name thereof to be the same as the name of the State and the Circuit and District Courts therefor shall be held at the Capital of the State for the time being, and the said district shall, for judicial purposes, until otherwise provided, be attached to the Ninth Judicial Circuit. There shall be appointed for said district one District Judge, one United States Attorney and one United States Marshal. The Judge of said district shall receive a yearly salary of \$3500, payable in four equal instalments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in the said district, who shall keep their offices at the Capital of said State. The regular terms of said courts shall be held in said district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both Circuit and District Courts. The Circuit and District Courts for said district, and the Judges thereof respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other Circuit and District Courts and Judges of the United States, and shall be governed by the same laws and regulations. The Marshal, District Attorney, and the clerks of the Circuit and District Courts of said district, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Oregon.

Sec. 17. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the Supreme Court of Said Territory, or that may hereafter lawfully be prosecuted upon any record from said Court, may be heard and determined by said Supreme Court of the United States; and the mandate of execution or for further proceed-

ings shall be directed by the Supreme Court of the United States to the Circuit or District Court hereby established within the said State from or to the Supreme Court of such State, as the nature of the case may require. And the Circuit, District, and State Courts herein named shall, respectively, be the successors of the Supreme Court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the Supreme Court of the Territory mentioned in this Act, in any case arising within the limits of the proposed State prior to the admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

Sec. 18. That in respect to all cases, proceedings, and matters now pending in the Supreme or District Courts of said Territory at the time of the admission into the Union of the State of Idaho, and arising within the limits of such State, whereof the Circuit or District Courts by this Act established might have had jurisdiction under the laws of the United States had such Courts existed at the time of the commencement of such cases, the said Circuit and District Courts, respectively, shall be the successors of said Supreme and District Courts of said Territory; and in respect to all other cases, proceedings, and matters pending in the Supreme or District Courts of said Territory at the time of the admission of such Territory into the Union, arising within the limits of said State, the Courts established by such State shall, respectively, be the successors of said Supreme and District Territorial Courts; and all the files, records, indictments and proceedings relating to any such cases shall be transferred to such Circuit, District, and State Courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of the State shall be pending, in any Territorial Court in said Territory, shall abate by the admission of such State into the Union, but the same shall be transferred and proceeded with in the proper United States Circuit, District, or State Court, as the case may be: *Provided, however,* That in all civil actions, causes and proceedings in which the United States is not a party, transfers shall not be made to the Circuit and District Courts of the United States, except upon written request of one of the parties to such action or proceedings filed in the proper court; and, in the absence of such request, such cases shall be proceeded with in the proper State courts.

Sec. 19. That from and after the admission of said State into the Union, in pursuance of this Act, the laws of the United States not locally inapplicable shall have the same force and effect within the said State as elsewhere within the United States.

Sec. 20. That the Legislature of the said State may elect two Senators of the United States as is provided by the Constitution of said State, and the Senators and Representatives of said State shall be entitled to seats in Congress, and to all the rights and privileges of

Senators and Representatives of other States in the Congress of the United States.

Sec. 21. That, until the State officers are elected and qualified under the provisions of the Constitution of said State, the officers of the Territory of Idaho shall discharge the duties of their respective offices under the Constitution of the State, in the manner and form as therein provided; and all laws in force, made by said Territory, at the time of its admission into the Union, shall be in force in said State, except as modified or changed by this Act or by the Constitution of the State.

Sec. 22. That all Acts or parts of Acts in conflict with the provisions of this Act, whether passed by Legislature of said Territory or by Congress, are hereby repealed.

Approved July 3, 1890.

UNITED STATES STATUTES RELATIVE TO AUTHENTICATION OF RECORDS

Sec. 905. The Acts of the Legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, Chief Justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they were taken.

Sec. 906. All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court of office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the Governor or Secretary of State, the Chancellor or keeper of the great seal, of the State, or Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such Governor, Secretary, Chancellor or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office with the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken.

Sec. 907. It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States on the application of head of one of the departments, the Solicitor

of the Treasury, or the Commissioner of the General Land Office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively, and when such copies are certified by an American Minister or Consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals.

THE NATURALIZATION LAW

(Public No. 338.)

AN ACT

TO ESTABLISH A BUREAU OF IMMIGRATION AND NATURALIZATION, AND
TO PROVIDE FOR A UNIFORM RULE FOR THE NATURALIZATION OF
ALIENS THROUGHOUT THE UNITED STATES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the designation of the Bureau of Immigration in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the said bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this Act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

Sec. 2. That the Secretary of Commerce and Labor shall provide the said bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this Act upon such bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

Sec. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States Circuit and District Courts now existing, or which may hereafter be established by Congress in any State, United

States District Courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the Supreme Court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

Sec. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing this petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence,

moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

Sec. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

Sec. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

Sec. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

Sec. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English lan-

guage: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

Sec. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

Sec. 10. That in case the petitioner has not resided in the State, Territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States upon notice to the Bureau of Immigration and Naturalization and the United States Attorney for the district in which said witnesses may reside.

Sec. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Sec. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this Act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other

proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization, and shall account for the same to the said bureau whenever required so to do by such bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

Sec. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expense of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such

purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said bureau as in case of other fees to which the United States may be entitled under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if in the opinion of the said Secretary the business of such clerk warrants such allowance.

Sec. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume, number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

Sec. 15. That it shall be the duty of the United States District Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers

of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or cancelled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

Sec. 16. That every person who falsely makes, forges, counterfeits or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

Sec. 17. That every person who engraves, or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by

the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

Sec. 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

Sec. 19. That every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars.

Sec. 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

Sec. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, or to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

Sec. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

Sec. 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five

years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceedings, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Sec. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

Sec. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect.

Sec. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three, of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed.

Sec. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION.

(Invalid for all purposes seven years after the date hereof.)

....., ss:

I,, aged.....years, occupation....., do declare on oath (affirm) that my personal description is: Color....., complexion....., height, weight....., color of hair....., color of eyes....., other visible distinctive marks; I was born in..... on the.....day of....., Anno Domini.....; I now reside at; I emigrated to the United States of America from..... on the vessel.....; my last foreign residence was It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which I am now a citizen (subject); I arrived at the (port) of, in the State (Territory or district) of on or about the day ofAnno Domini.....; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant).....
 Subscribed and sworn to (affirmed) before me this.....day of
, Anno Domini.....
 [L. S.]
 (Official character of attestor.)

PETITION FOR NATURALIZATION.

.....Court of.....
 In the matter of the petition of.....to be admitted as a
 citizen of the United States of America.

To the.....Court:

The petition of.....respectfully shows:

First. My full name is.....

Second. My place of residence is number street,
 city of....., State (Territory or District) of

Third. My occupation is

Fourth. I was born on the.....day of....., at

Fifth. I emigrated to the United States from....., on or about
 the.....day of....., Anno Domini....., and arrived at the port
 of, in the United States, on the vessel.....

Sixth. I declared my intention to become a citizen of the United
 States on the.....day of.....at....., in the..... court
 of.....

Seventh. I am...married. My wife's name is..... She
 was born in.....and now resides at..... I have.....children,
 and the name, date, and place of birth and place of residence of each
 of said children is as follows:.....;.....;
;.....;.....

Eighth. I am not a disbeliever in or opposed to organized govern-
 ment or a member of or affiliated with any organization or body of
 persons teaching disbelief in organized government. I am not a po-
 lygamist nor a believer in the practice of polygamy. I am attached
 to the principles of the Constitution of the United States, and it is
 my intention to become a citizen of the United States and to renounce
 absolutely and forever all allegiance and fidelity to any foreign prince,
 potentate, state, or sovereignty, and particularly to....., of which
 at this time I am a citizen (or subject), and it is my intention to reside
 permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of Amer-
 ica for a term of five years at least immediately preceding the date
 of this petition, to-wit, since....., Anno Domini....., and in the
 State (Territory or District) of.....for one year at least next pre-
 ceding the date of this petition, to-wit, since.....day of....., Anno
 Domini.....

Eleventh. I have not heretofore made petition for citizenship to
 any court. (I made petition for citizenship to the.....court of.....
 at....., and the said petition was denied by the said court for
 the following reasons and causes, to-wit,....., and
 the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declara-
 tion of intention to become a citizen of the United States and the

Dated.....

....., SS:

Subscribed and sworn to before me this.....day of.....,
Anno Domini.....

Clerk of the Court

.....Court of.....

....., SS :

.....

[L. S.]

CERTIFICATE OF NATURALIZATION.

Petition, volume, page

(Signature of holder)

Description of holder: Age,.....; height,.....; color,.....; complexion,.....; color of eyes,.....; color of hair,.....; visi-

hundred and seven; and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes of the United States shall not be applicable in any way to this appropriation.

Sec. 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

Sec. 31. That this Act shall take effect and be in force from and after ninety days from the date of its passage: *Provided*, That sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this Act.

Approved June 29, 1906.

CODE REVISION ACT

SENATE BILL NO. 121.

AN ACT

TO PROVIDE FOR THE REVISION, COMPILATION AND CODIFICATION OF
THE LAWS OF THE STATE OF IDAHO.

Be It Enacted by the Legislature of the State of Idaho:

Sec. 1. The Supreme Court of the State of Idaho is hereby authorized and empowered to appoint some person, learned in the law and a member of the bar of the Supreme Court of this State, who shall be known as a Code Commissioner, and who shall be authorized to revise, codify and compile the laws, civil, political, and criminal, and the laws of civil procedure, and to revise, arrange, simplify and consolidate the statutes of Idaho which shall be in force at the time such commissioner shall make his final report; and to make such changes, alterations, modifications, additions and substitutions as the said commissioner may deem best to the end that a complete simplified code of laws based on the laws in force at the time the said commissioner shall make his final report, shall be presented, but with the errors, inconsistencies, repetitions and ambiguities therein eliminated.

Sec. 2. It shall be the duty of the commissioner to prepare the following codes: The Political Code, the Civil Code, the Code of Civil Procedure and the Penal Code.

The Political Code shall treat of the sovereignty of the people of the State, of the political rights and duties, of the political divisions of the State, of the government of the counties, cities, towns, and of such other general laws as shall seem proper to the commissioner.

The Civil Code shall treat of property and property rights, persons and personal relations, corporations, contracts and obligations and other subjects properly related to the foregoing.

The Code of Civil Procedure shall treat of the procedure and practice in civil actions and proceedings in all the courts in the State, or in any subdivision thereof.

The Penal Code shall treat of crimes and misdemeanors and the punishment thereof, of criminal procedure and penitentiaries, prisons and jails.

The commissioner shall also make and prepare a report designating what statutes or parts of our statutes are omitted by him or repealed by the provisions of any other Act reported by him and what, if any, new sections he has added to such codes, and any laws of a general nature which ought to be enacted in addition to the codes reported.

Sec. 3. The Political Code must contain in addition to the other matters required, the Magna Charta, the Declaration of Independence, the Constitution of the United States, with the amendments, the Organic Act of the Territory of Idaho, the Act of Congress admitting Idaho as a State, the Constitution of the State of Idaho, the laws of the United States providing for the naturalization of citizens, the statutes of the United States relative to the authentication of records, and a copy of this Act.

Sec. 4. After each section or subdivision of the matter to be comprised in the said codes, there shall be a reference to the original text from which said section is compiled, and a reference to the corresponding section of the California code, if there shall be a similar or identical one. There shall be noted further, under each section, a complete reference to all decisions of the Supreme Court of Idaho and the decisions of the Federal Courts interpreting, construing or applying to said section.

Sec. 5. The number of volumes in which such codes shall finally be published shall be determined by the Supreme Court, and the Code Commissioner must make for such codes a complete working index of the contents thereof, either separately for each code, or, if the said codes are all published in one volume, then one general index for all the codes, in either case the said indexes to be alphabetically arranged and of sufficient particularity to refer to each section contained in the said codes and to the subject thereof, with cross references wherever they may be necessary, which index must be printed and bound in the volume containing the section referred to.

Sec. 6. Said commissioner shall receive for his services the sum of four thousand (\$4,000.00) dollars, and shall be authorized to expend the sum of two thousand (\$2,000.00) dollars, or as much thereof as may be necessary for legal assistance in connection with this work. The said commissioner shall keep his office at Boise City, and shall devote his entire time to the work of preparing the code of laws provided for herein. The said commissioner is empowered and authorized to employ such clerical assistance as may be necessary and to procure an office and proper supplies, at an expense of not to exceed two thousand five hundred (\$2,500.00) dollars.

Sec. 7. The salary of the said commissioner shall be paid quarterly in six payments, commencing with the quarter ending in June, 1907; the claims of said commissioner to be presented to and allowed by the Board of Examiners, and the Auditor is authorized to draw his warrant upon the general fund for the amount of such salary due and for all other expenses provided for in this Act. The compensation of all assistants and clerks to be paid when the same shall become due, upon being presented to and allowed by the Board of Examiners.

Sec. 8. The labors of the commissioner shall be concluded on or before the first day of July, 1908, and at said time it shall be the duty of the commissioner to file with the Secretary of State three copies of each of said codes, with the indexes and references herein provided for, and the same shall be submitted for action to the Legislature of the State of Idaho at its next general session or any special session called by the Governor at the request of the Supreme Court Judges.

Sec. 9. On or before the first day of July, 1908, the commissioner shall file five copies of his final report with the Secretary of State, which said report shall contain at length all changes, modifications, additions, substitutions or repeals of existing statutes, and such changes, modifications, additions, substitutions and repeals must refer specifically to the section, chapter or article of the printed code shown thereby, and the Secretary of State must cause such final report to be printed for the use of members of the Legislative Assembly.

Sec. 10. Each of the Codes and indexes must be so far completed as to be in a condition to print by the first day of July, 1908, and as soon thereafter as possible, the Secretary of State and Judges of the Supreme Court must have five hundred (500) copies of each of said codes printed in the same type and body type as is used in the printing of the Revised Statutes of Idaho, and bound with paper covers, the Code Commissioner being required to read and correct the proof sheets of said volume or volumes to be delivered to the Secretary of State, corrected, printed and bound on or before the first day of October, 1908, said printing and binding to be paid for out of the moneys appropriated by this Act.

Sec. 11. Upon receipt of the printed codes, the Secretary of State must deliver one printed copy of each volume of said codes, together with a copy of the report of the changes and substitutions, to each member of the Legislative Assembly, together with the indexes therefor, which printed volume, when so delivered, must have the effect of bills printed for the use of members of the Legislative Assembly, and also deliver, by mail or express, one copy of each volume to each judge of any court of record in the State of Idaho, one copy of each volume to each State officer, county attorney, member of the board of county commissioners, and seven copies of each volume to the clerks of the District Courts of Idaho, which copies of said reports, for distribution to and examination by the members of the bar of such courts, and to the Code Commissioner, ten copies of each volume.

Sec. 12. There is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, the sum of fourteen thousand (14,000) dollars, or so much thereof as may be necessary, for carrying out the provisions of this Act.

Sec. 13. Whereas, an emergency exists therefor, this Act shall take effect and be in force from and after its passage and approval.

Approved March 12, 1907.

CONSTITUTION OF THE STATE OF IDAHO

CONSTITUTION ADOPTED BY A CONSTITUTIONAL CONVENTION HELD AT
BOISE CITY, IN THE TERRITORY OF IDAHO, AUGUST 6, 1889.

Article

1. Declaration of Rights.
2. Distribution of Powers.
3. Legislative Department.
4. Executive Department.
5. Judicial Department.
6. Suffrage and Elections.
7. Finance and Revenue.
8. Public Indebtedness and Subsidies.
9. Education and School Lands.
10. Public Institutions.
11. Corporations, Public and Private.

Article

12. Corporations, Municipal.
13. Immigration and Labor.
14. Militia.
15. Water Rights.
16. Live-stock.
17. State Boundaries.
18. County Organizations.
19. Apportionment.
20. Amendments.
21. Schedule and Ordinance.

PREAMBLE.

We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

ARTICLE 1.

DECLARATION OF RIGHTS.

Section

1. Inalienable rights of man.
2. Political power inherent in the people.
3. State inseparable part of Union.
4. Guaranty of religious liberty.
5. Right of habeas corpus.
6. Right to bail.
7. Prosecutions only by indictment or information.
9. Freedom of speech.
10. Right of assembly.
11. Right to bear arms.
12. Military subordinate to civil power.

Section

13. Guaranties in criminal actions and due process of law.
14. Right of eminent domain.
15. Imprisonment for debt prohibited.
16. Bills of attainder, etc., prohibited.
17. Unreasonable searches and seizures prohibited.
18. Justice to be freely and speedily administered.
19. Right of suffrage guaranteed.
20. No property qualifications required of electors.
21. Reserved rights not impaired.

Inalienable Rights of Man.

Sec. 1. All men are by nature free and equal and have certain inalienable rights, among which are enjoying and defending life and

liberty, acquiring, possessing and protecting property, pursuing happiness, and securing safety.

Cited: McDonald v. Doust (1905)
11 Ida. 14; 81 Pac. 60.

Political Power Inherent in the People.

Sec. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary, and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the Legislature.

Cited: In re Prout (1906) 12 Ida. 494; 86 Pac. 275.

County Government: A county government is neither a special privilege nor special immunity within the meaning of this section, but is a funda-

mental governmental right recognized and adopted by the Constitution, which cannot be abrogated or alienated by legislative act. McDonald v. Doust (1905) 11 Ida. 14; 81 Pac. 60.

State Inseparable Part of Union.

Sec. 3. The State of Idaho is an inseparable part of the American union; and the Constitution of the United States is the supreme law of the land.

Guaranty of Religious Liberty.

Sec. 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths of affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise, any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the State, and the Legislature shall provide by law for the punishment of such crimes.

Right of Habeas Corpus.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

Right to Bail.

Sec. 6. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Right to Trial by Jury.

Sec. 7. The right of trial by jury shall remain inviolate but in civil

actions three-fourths of the jury may render a verdict, and the Legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve or any number less than twelve upon which the parties may agree in open court.

Right to Jury Trial: The guaranty of the right to trial by jury simply secures that right as it existed at the date of the adoption of the Constitution, and does not apply to equitable cases. *Christensen v. Hollingsworth* (1898) 6 Ida. 87; 53 Pac. 211; *Shields v. Johnson* (1904) 10 Ida. 476; 79 Pac. 391.

Same:—Unauthorized Reference: In an action at law the parties are entitled as of right to a trial by jury, and the court cannot refer the case against the objection of a party even though it requires the examination of a long account. *Russell v. Alt* (1907) 12 Ida. 789; 88 Pac. 416.

Same—Law Issues in Equitable Actions: In an action to enforce a mechanic's or laborer's lien, where it is shown by counter-claim or cross-complaint, that there is a demand for affirmative relief, either party is entitled to a jury trial on that issue if it is in the nature of an action at law. *Robertson v. Moore* (1904) 10 Ida. 115; 77 Pac. 218. Where a suit is brought in equity, and a cross action at law is interposed, either party is entitled to a jury trial of the issues raised by the cross action. *Lindstrom v. Hope Lbr. Co.* (1906) 12 Ida. 714; 88 Pac. 92.

Prosecutions Only by Indictment or Information.

Sec. 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger: *Provided*, That a grand jury may be summoned upon the order of the District Court in the manner provided by law: and, *Provided further*, That after a charge has been ignored by a grand jury, no person shall be held to answer or for trial therefor upon information of the public prosecutor.

Cited: *State v. Braithwaite* (1891) 3 Ida. 119; 27 Pac. 731; *State v. Faris* (1897) 5 Ida. 666; 51 Pac. 772.

Provisions Self Executing: This section is self executing; is complete in itself and needs no further legislation to put it into effect. *Davis v. Burke* (1900) 21 Sup. Ct. Rep. 210; 179 U. S. 399; 45 S. C. R. (Law ed.) 249.

Preliminary Examination—Waiver: The right of preliminary examination

is a right given to every one accused of crime, but this right may be waived unless prohibited by law. *State v. Larkins* (1897) 5 Ida. 200; 47 Pac. 945.

Order for Grand Jury: This section is not infringed by Laws 1891, 186, Sec. 7, which authorizes a District Judge sitting in chambers, to make an order for the calling of a grand jury. *State v. Barber* (1907) 13 Ida. ...; 88 Pac. 418.

Freedom of Speech.

Sec. 9. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.

Right of Assembly.

Sec. 10. The people shall have the right to assemble in a peaceable manner to consult for their common good; to instruct their

representatives, and to petition the Legislature for the redress of grievances.

Right to Bear Arms.

Sec. 11. The people shall have the right to bear arms for their security and defense; but the Legislature shall regulate the exercise of this right by law.

Legislative Regulation: The Legislature may regulate the exercise of the right to carry arms but may not prohibit it, and a statute which at-

tempts to prohibit, in any manner, the carrying of arms in cities, is void. In re Brickey (1902) 8 Ida. 597; 70 Pac. 609.

Military Subordinate to Civil Power.

Sec. 12. The military shall be subordinate to the civil power; and no soldier in time of peace shall be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

Guaranties in Criminal Actions and Due Process of Law.

Sec. 13. In all criminal prosecutions, the party accused shall have the right to speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel.

No person shall be put twice in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself, nor be deprived of his life, liberty or property without due process of law.

Cited: State v. Mulkey (1899) 6 Ida. 617; 59 Pac. 17.

Rights of Accused: The Constitutional rights of one accused of crime are not violated by permitting the use of depositions taken in the presence of the accused where the witness, by reason of death or other good cause, can not be produced on the trial. Territory v. Evans (1890) 2 Ida. 651; 23 Pac. 232.

A defendant in a criminal case who voluntarily takes the stand in his own behalf may be cross examined on the facts in issue. State v. Larkins (1897) 5 Ida. 200; 47 Pac. 945.

Due Process of Law: The guaranty of due process of law is not violated by an act which authorizes the summary seizure and destruction of gambling devices incapable of use for any purpose except in violation of the gambling law, as such devices are not property within the meaning of this section. Mullen & Co. v. Moseley (1907) 13 Ida. ...; 90 Pac. 987.

The right to due process of law requires, as a condition precedent to a judicial determination affecting the right to life, liberty or property, that personal service of process be obtained when practicable; constructive service can only be provided for when actual service is impracticable. Bear Lake Co. v. Budge (1904) 9 Ida. 703; 75 Pac. 614.

Section 34 of laws 1903, 223, relative to the distribution of water and adjudication of water rights, which authorizes a suit for adjudication of water rights to be brought against "all claimants of a right to the use of water" of the stream in question, without naming the defendants, or requiring any effort for personal service on such defendants as might be found, denies to such defendants due process of law, and is unconstitutional on that ground. Ib.

Right of Eminent Domain.

Sec. 14. The necessary use of lands for the construction of reservoirs or storage basins, for the purposes of irrigation, or for the rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use, for any useful, beneficial or neces-

sary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the State or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the State.

Private property may be taken for public use, but not until a just compensation, to be ascertained in a manner prescribed by law, shall be paid therefor.

Cited: *Ida. etc. Tel. Co. v. O. S. L. Ry.* (1901) 8 *Ida.* 175; 67 *Pac.* 318; *Baillie v. Larson* (1905) 138 *Fed. Rep.* 177.

Not Self-Executing: While the provisions of this section are not self-executing, or, in other words, do not furnish the procedure by which the power may be exercised, such procedure has been prescribed by the Legislature. *Potlatch Lbr. Co. v. Peterson* (1906) 12 *Ida.* 769; 88 *Pac.* 426.

Extent of Right: This section declares the purposes for which the power of eminent domain may be exercised, and the Legislature can not prohibit its exercise for any of the purposes therein specified. *Ib.*

Purposes for Which Authorized: The furnishing of electricity for lighting, transportation, power and other purposes, is a public use for which land may be taken. *Hollister v. State* (1903) 9 *Ida.* 8; 71 *Pac.* 541.

The lumbering interest of the State is one of its material resources in behalf of which the power of eminent domain may be invoked. *Potlatch*

Lbr. Co. v. Peterson (1906) 12 *Ida.* 769; 88 *Pac.* 426.

The necessary use of lands for the complete development of the material resources of the State is declared to be a public use, and in determining what is a public use the general welfare and benefit of the public is to be taken into consideration. The term, "public use," means public usefulness and productive of general benefit. The term is a flexible one and grows as new public uses are developed so as to make it capable of meeting new conditions and improvements of the ever increasing necessities of society. *Ib.*

This section recognizes the right of the Legislature to provide for laying out private roads or pentways for the use of any one who may desire to use them as provided for in Revised Statutes, Sec. 933. *Latah Co. v. Peterson* (1892) 3 *Ida.* 398; 29 *Pac.* 1089. The owner of land is guaranteed the right to have opened a private road giving him access to the highway. *Latah Co. v. Hasfurther* (1907) 12 *Ida.* 797; 88 *Pac.* 433.

Imprisonment for Debt Prohibited.

Sec. 15. There shall be no imprisonment for debt in this State except in cases of fraud.

Bills of Attainder, Etc., Prohibited.

Sec. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Test Oath: The Act of Feb. 25, 1891, prescribing a test oath as a condition of suffrage is not an ex post facto law or bill of attainder within

the prohibitions of this section. *Shepherd v. Grimmett* (1892) 3 *Ida.* 403; 31 *Pac.* 793.

Unreasonable Searches and Seizures Prohibited.

Sec. 17. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

Cited: *State v. Mulkey* (1899) 6 *Ida.* 617; 59 *Pac.* 17; *Mullen & Co. v.*

Mosley (1907) 13 *Ida.*; 90 *Pac.* 987.

Justice to Be Freely and Speedily Administered.

Sec. 18. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay or prejudice.

Cited: (concur. op.) Heitman v. Morgan (1905) 10 Ida. 562; 79 Pac. 225.

Allowance of Attorney's Fees: This provision is not violated by that part of the mechanic's lien law of 1899 which authorizes a recovery of a reasonable attorney's fee. Thompson v. Wise Boy Min. Co. (1903) 9 Ida. 363; 74 Pac. 958.

Prejudice of Judge: This section is self-acting and self-executing and

cannot be nullified by the legislature either by its neglect to act on the subject, or by positive legislation, and the prejudice of the trial judge against one of the parties to a cause is ground for a change of venue in view of the provisions of this section, although the statutes do not enumerate that cause as one of the grounds for a change of venue. (Stockslager, C. J. dissents) Day v. Day 12 Ida. 556; 86 Pac. 531.

Right of Suffrage Guaranteed.

Sec. 19. No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

No Property Qualification Required of Electors.

Sec. 20. No property qualification shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness.

Municipal Bond Elections: This section authorizes the imposition, in a municipal charter, of a property qualification on the right to vote on

a proposition for the incurrence of an indebtedness. Wiggin v. City of Lewiston (1902) 8 Ida. 527; 69 Pac. 286.

Reserved Rights Not Impaired.

Sec. 21. This enumeration of rights shall not be construed to impair or deny other rights by the people.

ARTICLE 2.**DISTRIBUTION OF POWERS.****Section****1. Departments of government.****Departments of Government.**

Sec. 1. The powers of the government of this State are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Power of Appointment: This section is not infringed by Laws 1899, 345, which empowers the Governor to appoint a State Board of Medical Examiners, and to fill vacancies in the board, without the consent of the Senate. In re Inman (1902) 8 Ida. 398; 69 Pac. 120.

Limitation on Judiciary: The judi-

cial department can not attempt to prohibit either of the other departments of government from acting within the recognized scope of their respective branches of the government, but may inquire into the legal effect of such action after it has been taken. Stein v. Morrison (1904) 9 Ida. 426; 75 Pac. 246.

ARTICLE 3.

LEGISLATIVE DEPARTMENT.

Section

1. Legislative power enacting clause.
2. Membership of House and Senate.
3. Term of office.
4. Apportionment of Legislature.
5. Senatorial and Representative districts.
6. Qualifications of members.
7. Privilege from arrest.
8. Sessions of Legislature.
9. Powers of each house.
10. Quorum, adjournments, and organization.
11. Expulsion of members.
12. Secret sessions prohibited.
13. Journal.

Section

14. Origin and amendment of bills.
15. Manner of passing bills.
16. Unity of subject and title.
17. Technical terms to be avoided.
18. Amendments to be published in full.
19. Local and special laws prohibited.
20. Lotteries not to be authorized.
21. Signature of bills and resolutions.
22. When Acts take effect.
23. Compensation and mileage of members.
24. Promotion of temperance and morality.
25. Oath of office.

Legislative Power: Enacting Clause.

Sec. 1. The legislative power of the State shall be vested in a Senate and House of Representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislature of the State of Idaho."

Cited: *People v. Alturas Co.* (1899)
6 Ida. 418; 55 Pac. 1067.

Membership of House and Senate.

Sec. 2. The Senate shall consist of eighteen members and the House of Representatives of thirty-six members. The Legislature may increase the number of Senators and Representatives: *Provided*, The number of Senators shall never exceed twenty-four, and the House of Representatives shall never exceed sixty members. The Senators and Representatives shall be chosen by the electors of the respective counties or districts into which the State may from time to time be divided by law.

Term of Office.

Sec. 3. The Senators and Representatives shall be elected for the term of two years, from and after the first day of December next following the general election.

Apportionment of Legislature.

Sec. 4. The members of the first Legislature shall be apportioned to the several legislative districts of the State in proportion to the number of votes polled at the last general election for Delegate to Congress, and thereafter to be apportioned as may be provided by law: *Provided*, Each county shall be entitled to one Representative.

Apportionment Acts: Laws 1891, 195, which, in providing for the apportionment of the Legislature, accorded representation to two counties

created by an Act subsequently declared to be unconstitutional, and omitted to provide representation for the counties from which the two cre-

ated counties were organized, is unconstitutional. *Ballentine v. Willey* (1893) 3 Ida. 496; 31 Pac. 994.

An Act creating a new county is not unconstitutional on the theory that it deprives the electors of the new county of the representation to which they are entitled by this section, as in the absence of a new ap-

portionment act, the electors of the new county are entitled to a voice in the election of the Senator and Representatives of the county from which the new county was created, and with which it previously constituted a legislative district. *Sabin v. Curtis* (1893) 3 Ida. 662; 32 Pac. 1130.

Senatorial and Representative Districts.

Sec. 5. A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties and no county shall be divided in creating such districts.

Application: This section applies to an apportionment law and not to an act creating a new county; and, in any event, such an act is not obnoxious to this provision where the coun-

ty so created is within the same senatorial and representative districts in which its territory was situated prior to its creation. *Sabin v. Curtis* (1893) 3 Ida. 662; 32 Pac. 1130.

Qualifications of Members.

Sec. 6. No person shall be a Senator or Representative who at the time of his election is not a citizen of the United States and an elector of this State, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

Privilege from Arrest:

Sec. 7. Senators and Representatives, in all cases except for treason, felony, or breach of the peace, shall be privileged from arrest during the session of the Legislature, and in going to and returning from the same, and shall not be liable to any civil process during the session of the Legislature, nor during the ten days next before the commencement thereof; nor shall a member for words uttered in debate in either house be questioned in any other place.

Sessions of Legislature.

Sec. 8. The sessions of the Legislature shall, after the first session thereof, be held bienially, at the capital of the State, commencing on the first Monday after the first day of January, and every second year thereafter, unless a different day shall have been appointed by law, and at other times when convened by the Governor.

Cited: *Goodnight v. Moody* (1891) 3 Ida. 7; 26 Pac. 121.

Powers of Each House.

Sec. 9. Each house when assembled shall chose its own officers, judge of the election, qualifications, and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.

Construction: The provision of this section that each house is to determine its own rules of procedure, is not a controlling provision of the Constitution and is not to be taken

literally, but is to be construed in connection with Art. 3, Sec. 15. *Cohn v. Kingsley* (1897) 5 Ida. 416; 49 Pac. 985.

Quorum, Adjournments and Organization.

Sec. 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as such house may provide. A quorum being in attendance, if either house fail to effect an organization within the first four days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said four days until an organization shall have been effected.

Expulsion of Members.

Sec. 11. Each house may, for good cause shown, with the concurrence of two-thirds of all the members, expel a member.

Secret Sessions Prohibited.

Sec. 12. The business of each house, and of the committee of the whole, shall be transacted openly and not in secret sessions.

Journal.

Sec. 13. Each house shall keep a journal of its proceedings; and the yeas and nays of the members of either house on any question, shall at the request of any three members present, be entered on the journal.

Contents of Journal: The journal of both houses of the Legislature must affirmatively show that the provisions of the Constitution were substantially followed by the Legislature in the passage of an Act, the validity of which is questioned. *Cohn v. Kingsley* (1897) 5 Ida. 416; 49 Pac. 985. And the failure of the journal to show compliance with the Constitution is conclusive evidence of non-compliance. *Ib.*

A vote on the final passage of any bill, or on the suspension of the provision of the Constitution which requires the reading of bills on three several days, or on the expulsion of a member, whether demanded by three members or not, must be by yeas and nays, and entered in the journal. *Ib.* *Sullivan, C. J.*, dissents from these propositions and holds that only such matters as are expressly required by the Constitution to be entered in the journal need be so entered; that the yea and nay vote need not be entered unless requested by three members, and that a law is not invalid because of the journal's failure to show compliance with Constitutional provisions not required to be entered on the journal. *Ib.*

Conclusiveness of Journal: The court will not go behind the journal of the Legislature to ascertain what is done by that body; the journal itself is conclusive, and if incorrectly or improperly made up, it is for the Legislators and not for the court, to correct the same. *Burkhart v. Reed* (1889) 2 Ida. 503; 22 Pac. 1. The journal is not only the best, but the exclusive evidence of what was done by the Legislature in passing bills, and absolute verity will be imputed thereto by the courts. *Cohn v. Kingsley* (1897) 5 Ida. 416; 49 Pac. 985.

Consideration by Court: The court may go back of the enrolled bill and examine the journals of the respective houses of the Legislature in order to ascertain whether the requirements of the Constitution were obeyed in the passage of an act which is questioned. *Ib.*

Before a court will assume to pass upon the constitutionality of the enactment of a statute by the Legislature, it must have before it a copy of the original journals showing the whole record of the enactment, duly certified by the Secretary of State; the want of such journal cannot be supplied by stipulation of counsel. *State v. Boise* (1897) 5 Ida. 519; 51 Pac. 110.

Origin and Amendment of Bills.

Sec. 14. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originated in the House of Representatives.

Cited: Cohn v. Kingsley (1897) 5 Ida. 416; 49 Pac. 985.

Passage of Amendments: The fact that the House amended the title to a bill, and then failed to return the bill to the Senate for its concurrence in the amendment, but referred the same to the committee on enrollment, and that it was thereupon presented to the Governor for his approval, does

not render the act void, where the amendment to the title consisted merely in striking out a certain clause applicable to a portion of the act which had been left out by the Senate amendments, afterwards concurred in by the House, and which did not appear in the Act as finally passed. State v. Doherty (1892) 3 Ida. 384; 29 Pac. 855.

Manner of Passing Bills.

Sec. 15. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon: *Provided*, In case of urgency, two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present.

Cited: Aldeman v. Pierce (1898) 6 Ida. 294; 55 Pac. 658; Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969.

Application—Constitutional Amendments: The power of the Legislature to propose amendments to the Constitution is not governed by the provisions of this section. Hays v. Hays (1897) 5 Ida. 154; 47 Pac. 732.

Passage of Amended Bills: A bill, within the contemplation of the Constitution, means a draft of a proposed law and nothing else, and includes all amendments which are incorporated therein up to the time of its passage. Therefore, amendments, when offered and accepted, must be printed with the bill, and the whole bill as amended must be read on three several days. Cohn v. Kingsley (1897) 5 Ida. 416; 49 Pac. 985. Sullivan, C. J., dissents and holds that amendments to a bill need not be read on three several days in each house, as required in case of bills by this section. *Ib.*

A bill which passes one house, and which is materially changed by amendment by the other house, and then sent back to the house where it originated, must go through the same procedure as to reading and final vote as if it were an original bill. The

mere declaration that "we concur in the house amendments" does not answer the requirements of the Constitution. *Ib.*

Application of Proviso: The proviso to this section applies only to the last clause preceding the proviso, and it does not authorize the Legislature to dispense with the introduction of a proposed law by bill, nor with printing the bill, but simply authorizes it to dispense with the necessity of taking six days for the passage of a bill, and to pass the same in one day, in case of urgency requiring such action. *Ib.*

The constitutional provision requiring the printing and reading of bills on three several days is mandatory, and such readings cannot be dispensed with except in "case of urgency" and then only on an aye and nay vote by two-thirds of the house voting with reference to only one bill before it; the provision can not be suspended generally. *Ib.*

The Legislature has no power to dispense with the final reading of the bill, section by section, and an act not read section by section at least on the final reading, is void. Brown v. Collister (1897) 5 Ida. 589; 51 Pac. 417.

Unity of Subject and Title.

Sec. 16. Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

Cited: State v. Mulkey (1899) 6 Ida. 617; 59 Pac. 17.

Application to Constitutional Amendments: It is not essential that the subject of the proposed constitutional amendment should be expressed in its title. A proposed amendment need not have any title except that it should designate the article of the Constitution to be amended. Hays v. Hays (1897) 5 Ida. 154; 47 Pac. 732.

General Construction: The generality of a title to a bill is no objection to it, so long as it is not made a cover to legislation incongruous in itself, which, by no fair intendment, can be considered as having a necessary or proper connection with it. Pioneer Irr. Dist. v. Bradley (1902) 8 Ida. 310; 68 Pac. 295.

The courts must give a liberal construction to the language used by the Legislature in framing the title to any given Act which it may pass. Turner v. Coffin (1903) 9 Ida. 338; 74 Pac. 962.

The intention of this provision was to require a title sufficiently definite and comprehensive to indicate, to one reading it, the general scope and purpose of the legislation intended by the act, and if the title be sufficient for that purpose, it will be held to include all necessary and incidental legislation required to make the general purpose of the act operative. *Ib.*

Sufficient Titles. A title reading: "To amend section 3604 (concerning issue of bonds by counties for certain purposes in excess of the income or revenue of the county for the year) in section 1 of an Act of the Legislature of the State of Idaho entitled, 'An Act providing for the issuance of negotiable coupon bonds for the funding and refunding of county indebtedness, amending chapter 6, title 13, Revised Statutes of Idaho, approved February 7, 1899,' by adding thereto authority to issue bonds to assist any city or village in constructing a free bridge over any navigable stream, within, or partly within, or adjoining the limits of any such city or village," sets forth the subject, object or purpose of the act sufficiently. Andrews v. Board of Commrs. of Ada Co. (1900) 7 Ida. 453; 63 Pac. 592.

Laws 1901, 91, the title to which is, in substance, "An Act to amend certain sections of an Act to provide for the organization and government of irrigation districts and to amend certain sections of an Act providing for a State Engineer," while it covers subjects which had previously been segregated into distinct acts by the Legislature, yet relates solely to the one general subject of irrigation which might have been covered by a single Act, is not repugnant to this section. (Quarles, C. J., dissents.)

Pioneer Irr. Dist. v. Bradley (1902) 8 Ida. 310; 68 Pac. 295.

An Act entitled, "An Act to amend section 1645 of the Revised Statutes of Idaho, as amended by Act approved February 16, 1899," is sufficient. State v. Jones (1904) 9 Ida. 693; 75 Pac. 819.

Laws 1903, 223, providing for the appropriation, diversion and adjudication of the rights to the use of all the waters in the State running in the natural channel of streams, and which contemplates that all such waters are "public waters," private rights therein being simply rights to the use of the same and not an ownership in them, is sufficiently indicated by its title, which is: "An Act to regulate the appropriation and diversion of the 'Public Waters' of the State." Boise Irr. etc. Co. v. Stewart (1904) 10 Ida. 38; 77 Pac. 25, 321.

The subject of the Act of March 9, 1903, amending the charter of the city of Lewiston, is sufficiently expressed by the title: "An Act to amend an Act entitled, 'An Act to amend the charter of the city of Lewiston, approved February 9, 1881,' and to amend an Act entitled (designating the several Acts affecting and amending the charter of said city) and establishing a new and complete charter for said city." Butler v. City of Lewiston (1905) 11 Ida. 393; 83 Pac. 234.

The irrigation law of March 9, 1903, is sufficiently covered by its title, which is, "An Act relating to irrigation districts and to provide for the organization thereof, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, and for other and similar purposes." Nampa, etc. Irr. Dist. v. Brose (1905) 11 Ida. 474; 83 Pac. 499.

A title, "An Act to amend section 24 of an Act entitled, 'An Act to provide for the organization, government and powers of cities and villages, approved February 10, 1899,' the body of the Act purporting to amend the section referred to in the title, is sufficient. School Dist. No. 27 v. Village of Twin Falls (1907) 13 Ida...; 90 Pac. 735.

Insufficient Titles: An Act entitled, "An Act providing for the apportionment of the Legislature," and which purports to provide for such apportionment among all the supposed existing counties of the State, can not be sustained after certain of the counties for which it provided the apportionment have been declared non-existent by the Supreme Court, because of the unconstitutionality of the law purporting to create them. Balentine v. Willey (1893) 3 Ida. 496; 31 Pac. 994.

The act of March 4, 1903, Laws (1903, 375) the title to which is

"An Act to provide for the care and keeping of moneys in the custody of the Treasurer of the State of Idaho," and the general purpose of which is to secure interest on State moneys by depositing the same in banks out of the custody of the Treasurer, is void under this section. *Turner v. Coffin* (1903) 9 Ida. 388; 74 Pac. 962.

An Act entitled, "An Act relating to foreign corporations doing business in the State of Idaho," is in violation of this section, where the body thereof purports to relieve foreign corporations from the penalties and forfeitures incurred by them in transacting business within the State in violation of law. *Katz v. Herrick* (1906) 12 Ida. 1; 86 Pac. 873.

Laws 1903, 346, the title to which purports to prohibit the sale of liquor near public works and grading camps, but the body of which does not prohibit such sale, but undertakes to regulate it, is repugnant to this section. *Gerding v. Board of Commrs. of Idaho Co.* (1907) 13 Ida. ...; 90 Pac. 357.

Unity of Subject: The objection should be grave, and the conflict between the Constitution and the Statute palpable, before the judiciary should hold a legislative enactment unconstitutional upon the sole ground

that it embraces more than one subject. *Pioneer Irr. Dist. v. Bradley* (1902) 8 Ida. 310; 68 Pac. 295.

The object of this section was to prohibit combining in one bill subjects diverse in their nature and having no necessary connection. It was not intended to prevent the incorporation into a single act of the entire statutory law upon one general subject. And if the provisions of an act all relate directly or indirectly to the same subject, have a natural connection therewith and are not foreign to the subject expressed in the title, they are properly united in a single act, however numerous such provisions may be. *Ib.*

If two separate bills are passed by the Legislature on the same general subject, and with differently worded titles, said acts may be amended by one bill, with a proper title. But if the title contains two distinct subjects, and both the subjects are legislated upon in the body of the act, the act is absolutely void. *Ib.*

Those portions of acts passed by the Legislature which are not included or embraced within the title of such acts are void. *Cohn v. Kingsley* (1897) 5 Ida. 416; 49 Pac. 985.

Technical Terms to be Avoided.

Sec. 17. Every Act or Joint Resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

Amendments to be Published in Full.

Sec. 18. No Act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length.

Cited: (Concur. op.) *Green v. State Board Canvassers* (1896) 5 Ida. 130; 47 Pac. 259.

Application: This section has no application to repeals either express or implied, but only to revisions and amendments. *Noble v. Bragaw* (1906) 12 Ida. 265; 85 Pac. 903.

Object of Section: The object of this provision is to prevent obscurity, confusion and uncertainty in the law; it deals with such amendments as change the application, force or effect of an act; the act of the first State Legislature changing the words "territory" to "state" and "comptroller" to "auditor" is not repugnant to this section. *Gilbert v. Moody* (1891) 3 Ida. 3; 25 Pac. 1092.

Setting Out Amendments: This section does not require the whole chapter of which the amended section is a part, to be set forth at full length, but only requires the section amended to be set out although, standing alone, the amended section is not sufficient to indicate its purpose. *State v. Jones* (1904) 9 Ida.

693; 75 Pac. 819. The whole act containing the section amended need not be republished in full, but only the section amended need be republished. *Noble v. Bragaw* (1906) 12 Ida. 265; 85 Pac. 903.

Construction of Related Acts: Two or more laws relating to the same subject or to different parts of the same subject, are not necessarily amendatory to each other, within the meaning of this section, although they may be construed in *pari materia*. *Ib.*

Laws 1905, 39, Sec. 39, which repeals such sections of the sheep inspection law of 1901 as create the office of sheep inspector and deputy sheep inspectors, but continues in force the remainder of the act of 1901, and requires the State veterinary surgeon and live stock inspectors, provided for in said act of 1905, to perform the duties imposed on the sheep inspector and his deputies by the act of 1901, is not in violation of this section. *Ib.*

Local and Special Laws Prohibited.

Sec. 19. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and constables.

For the punishments of crimes and misdemeanors.

Regulating the practice of the courts of justice.

Providing for a change of venue in civil or criminal actions.

Granting divorces.

Changing the names of persons or places.

Authorizing the laying out, opening, altering, maintaining, working on, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, or any public grounds not owned by the State.

Summoning and impaneling grand and trial juries, and providing for their compensation.

Regulating county and township business, or the election of county and township officers.

For the assessment and collection of taxes.

Providing for and conducting elections, or designating the place of voting.

Affecting the estates of deceased persons, minors, or other persons under legal disabilities.

Extending the time for collection of taxes.

Giving effect to invalid deeds, leases or other instruments.

Refunding money paid into the State Treasury.

Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any person or corporation in this State, or any municipal corporation therein.

Declaring any person of age, or authorizing any minor to sell, lease or incumber his or her property.

Legalizing as against the State the unauthorized or invalid act of any officer.

Exempting property from taxation.

Changing county seats, unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed: *Provided*, That the power to pass a special law shall cease as long as the Legislature shall provide for such change by general law: *Provided further*, That no special law shall be passed for any one county oftener than once in six years.

Restoring to citizenship persons convicted of infamous crimes.

Regulating the interest on money.

Authorizing the creation, extension or impairing of liens.

Chartering or licensing ferries, bridges or roads.

Remitting fines, penalties or forfeitures.

Providing for the management of common schools.

Creating offices or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts, except as in this Constitution otherwise provided.

Changing the law of descent or succession.

Authorizing the adoption or legitimization of children.

For limitation of civil or criminal actions.

Creating any corporation.

Creating, increasing or decreasing fees, percentages, or allowances of public officers during the term for which said officers are elected or appointed.

Cited: *Wiggin v. City of Lewiston* (1902) 8 Ida. 527; 69 Pac. 286.

Scope of Prohibition: This section prohibits the enactment of local or special laws on the subjects therein enumerated, but leaves the Legislature master of its own discretion in passing special laws on subjects not prohibited by the Constitution. *Butler v. City of Lewiston* (1905) 11 Ida. 393; 83 Pac. 234. Thus the Legislature may amend by special law the charter of a pre-existing city so long as the amendments are germane with the objects of the charter. *Ib.*

Laws Concerning Crimes: The act of 1897 prohibiting gambling, if construed so as to make an act lawful in one part of the State which is, in another part, made a misdemeanor, would be a local or special law and unconstitutional. *In re Ridenbaugh* (1897) 5 Ida. 371; 49 Pac. 12.

Regulations of Practice: Section 34 of Laws 1903, 223, relative to the distribution of water and adjudication of water rights, which authorizes a suit for adjudication of water rights to be brought against "all claimants of a right to the use of the water" of the stream in question, without naming the defendants or requiring any effort for personal service on such defendants as might be found, is special legislation regulating

practice, and is repugnant to this section. *Bear Lake Co. v. Budge* (1904) 9 Ida. 703; 75 Pac. 614.

Laws 1903, 223, providing for the appropriation, diversion and adjudication of the rights to the use of the waters of the State, and which contains certain peculiar provisions as to the duties of the State engineer, the apportionment of costs, the preparation and use of maps as evidence, etc., in proceedings for the adjudication of water rights, is not repugnant to subdivision 3 of this section, which prohibits local laws regulating practice. (*Stockslager, J.*, dissents) *Boise Irr. etc. Co. v. Stewart* (1904) 10 Ida. 38; 77 Pac. 25, 321.

Regulation of Counties: The Legislature, in creating a new county, may provide for the appointment by the Governor of county officers to hold office until the first biennial election after the creation of the county. *Sabin v. Curtis* (1893) 3 Ida. 662; 32 Pac. 1130.

An act creating a new county and apportioning the indebtedness of the original county and the new county, does not violate the requirement of this section which prohibits the Legislature from framing local laws regulating county and township business. *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277.

Lotteries Not to be Authorized.

Sec. 20. The Legislature shall not authorize any lottery or gift enterprise under any pretense or for any purpose whatever.

Signature of Bills and Resolutions.

Sec. 21. All bills or joint resolutions passed shall be signed by the presiding officers of the respective houses.

When Acts Take Effect.

Sec. 22. No Act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

Cited: *Shoshone Co. v. Thompson* (1905) 11 Ida. 130; 81 Pac. 73.

Compensation and Mileage of Members.

Sec. 23. Each member of the Legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such pay shall not exceed for each member, except the presiding officer, in the aggregate, three hundred dollars

for per diem allowances for any one session; and shall receive each the sum of ten cents per mile each way by the usual traveled route.

When convened in extra session by the Governor, they shall each receive five dollars per day; but no extra session shall continue for a longer period than twenty days, except in case of the first session of the Legislature. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the Legislature shall each in virtue of his office receive an additional compensation equal to one-half his per diem allowance as a member: *Provided*, That whenever any member of the Legislature shall travel on a free pass in coming to or returning from the session of the Legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member.

Application: This section, which limits the compensation of members of the Legislature to \$300 for any one session, applies to the regular biennial sessions of the Legislature, and does not apply to the first session directed

by Art. 21, Sec. 14, to be called by the Governor immediately upon his qualification and assumption of duties. (Huston, J., dissents.) *Good-night v. Moody* (1891) 3 Ida. 7; 26 Pac. 121.

Promotion of Temperance and Morality.

Sec. 24. The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The Legislature should further all wise and well directed efforts for the promotion of temperance and morality.

Oath of Office.

Sec. 25. The members of the Legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of Senator (or Representative, as the case may be) according to the best of my ability." And such oath may be administered by the Governor, Secretary of State, or Judge of the Supreme Court or presiding officer of either house.

ARTICLE 4.

EXECUTIVE DEPARTMENT.

Section

1. Executive officers: term of office.
2. Election of officers.
3. Qualifications of officers.
4. Governor is commander of militia.
5. Supreme executive power vested in Governor.
6. Governor to appoint officers.
7. Board of pardons.
8. Governor may require reports: messages to Legislature.
9. Extra sessions of Legislature.
10. Veto power.

Section

11. Disapproval of appropriation bills.
12. Lieutenant Governor to act as Governor.
13. Lieutenant Governor is President of Senate.
14. President pro tempore to act as Governor.
15. Great seal of the State.
16. Grants and permissions.
17. Accounts and reports of officers.
18. Board of prison commissioners and examiners.
19. Salaries and fees of officers.

Executive Officers: Term of Office.

Sec. 1. The executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction, each of whom shall hold his office for two years beginning on the first Monday in January next after his election, except as otherwise provided in this Constitution. The officers of the executive department, excepting the Lieutenant Governor, shall during their terms of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law.

Election of Officers.

Sec. 2. The officers named in section one of this article shall be elected by the qualified electors of the State at the time and places of voting for members of the Legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the Legislature at its next regular session, shall forthwith, by joint ballot, elect one of said persons for said office. The returns of election for the officers named in section one shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

Qualifications of Officers.

Sec. 3. No person shall be eligible to the office of Governor or Lieutenant Governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of Secretary of State, State Auditor, Superintendent of Public Instruction, or State Treasurer, unless he shall have attained the age of twenty-five years; nor to the office of Attorney General unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the State or Territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the State or Territory two years next preceding his election.

Governor Is Commander of Militia.

Sec. 4. The Governor shall be commander-in-chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

Supreme Executive Power Vested in Governor.

Sec. 5. The supreme executive power of the State is vested in the Governor, who shall see that the laws are faithfully executed.

Governor to Appoint Officers.

Sec. 6. The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by this Constitution, or which may be created by law and whose appointment or election is not otherwise provided for. If during the recess of the Senate, a vacancy occurs in any State or district office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the office of a Justice of the Supreme or District Court, Secretary of State, State Auditor, State Treasurer, Attorney General, or Superintendent of Public Instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

Appointment of Officers: This section, in providing for the appointment of officers by the Governor with the consent of the Senate, applies only to officers for whose appointment no other provision is made by law, and

is not infringed by Laws 1899, 345, providing for the appointment of a Board of Medical Examiners by the Governor without the consent of the Senate. In re Inman (1902) 8 Ida. 398; 69 Pac. 120.

Board of Pardons.

Sec. 7. The Governor, Secretary of State, and Attorney General shall constitute a board to be known as the Board of Pardons. Said board, or a majority thereof, shall have the power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose, in all cases of offenses against the State except treason or conviction on impeachment. The Legislature shall by law prescribe the session of said board and the manner in which application shall be made and regulate the proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the Secretary of State.

The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the Governor shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communi-

cate to the Legislature, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto.

Conditional Pardons: The board of pardons may attach such conditions as they see fit to pardon, commutation or parole, so long as they are not immoral, illegal or impossible of performance, and provided that they are to be kept or performed, or complied with, during the term for which the prisoner was sentenced, but they can not require a convict who

has broken his parole to undergo imprisonment, after the expiration of the time fixed by the judgment of conviction for the termination of such imprisonment, by requiring him to serve an additional time equal to that during which he was out on parole. (Sullivan, J., dissents.) In re Prout (1906) 12 Ida. 494; 86 Pac. 275.

Governor May Require Reports: Messages to Legislature.

Sec. 8. The Governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or State institution. The Governor shall at the commencement of each session and from time to time, by message, give to the Legislature information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall also send to the Legislature a statement, with vouchers, of the expenditures of all money belonging to the State and paid out by him. He shall also, at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the State.

Extra Sessions of Legislature.

Sec. 9. The Governor may, on extraordinary occasions, convene the Legislature by proclamation stating the purposes for which he has convened it; but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the Senate in extraordinary session for the transaction of executive business.

Cited: Goodnight v. Moody (1891)
3 Ida. 7; 26 Pac. 121.

Veto Power.

Sec. 10. Every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journals

and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house, it shall become a law, notwithstanding the objections of the Governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the Governor to the Legislature within five days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the Legislature shall by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the Secretary of State within ten days after such adjournment (Sundays excepted) or become a law.

Disapproval of Appropriation Bill.

Sec. 11. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts approved shall become a law and the item or items disapproved shall be void unless enacted in the manner following: If the Legislature be in session, he shall within five days transmit to the house within which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Lieutenant Governor to Act as Governor.

Sec. 12. In case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the Governor, or his death, removal from office, resignation, absence from the State, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall cease, shall devolve upon the Lieutenant Governor.

Lieutenant Governor Is President of Senate.

Sec. 13. The Lieutenant Governor shall be president of the Senate, but shall vote only when the Senate is equally divided. In case of the absence or disqualification of the Lieutenant Governor from any cause which applies to the Governor, or when he shall hold the office of Governor, then the president pro tempore of the Senate shall perform the duties of the Lieutenant Governor until the vacancy is filled or the disability removed.

President Pro Tempore to Act as Governor.

Sec. 14. In case of the failure to qualify in his office, death, resignation, absence from the State, impeachment, conviction of treason, felony or other infamous crime, or disqualification from any cause, of both Governor and Lieutenant Governor, the duties of the Governor shall devolve upon the President of the Senate pro tempore, until such disqualification of either the Governor or Lieutenant Governor be removed, or the vacancy filled; and if the President of the Senate,

for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House.

Great Seal of the State.

Sec. 15. There shall be a seal of this State, which shall be kept by the Secretary of State and used by him officially, and shall be called "The Great Seal of the State of Idaho." The seal of the Territory of Idaho, as now used, shall be the seal of the State until otherwise provided by law.

Grants and Permissions.

Sec. 16. All grants and permissions shall be in the name and by the authority of the State of Idaho, sealed with the Great Seal of the State, signed by the Governor and countersigned by the Secretary of State.

Accounts and Reports of Officers.

Sec. 17. An account shall be kept by the officers of the executive department and of all public institutions of the State, of all moneys received by them severally, from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the Governor, under oath; they shall also, at least twenty days preceding each regular session of the Legislature, make full and complete reports of their official transactions to the Governor, who shall transmit the same to the Legislature.

Boards of Prison Commissioners and of Examiners.

Sec. 18. The Governor, Secretary of State, and Attorney General shall constitute a board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State prison as may be prescribed by law. They shall also constitute a board of examiners, with power to examine all claims against the State, except salaries or compensations of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the State, except salaries and compensation of officers fixed by law, shall be passed upon by the Legislature without first having been considered and acted upon by said board.

Cited: *Krautinger v. Board of Examiners* (1902) 8 Ida. 463; 69 Pac. 279; *Ackley v. Perrin* (1905) 10 Ida. 531; 79 Pac. 192.

Board of Examiners: A claim arising out of a contract for the construction of a State wagon road which stipulates for the final payment when the contract is executed to the satisfaction of the commissioners and board of examiners, must be submitted for the approval of the board of

examiners before the auditor can be required to issue his warrant therefor. *Winters v. Ramsey* (1895) 4 Ida. 303; 39 Pac. 193.

Same—Coercion of Action: If the board refuses to act on a matter upon which the law requires them to act the court may compel action but can not direct the board how they shall act in a particular case. (*Sullivan, J., dissents.*) *Pyke v. Steunenberg* (1897) 5 Ida. 614; 51 Pac. 614.

Salaries and Fees of Officers.

Sec. 19. The Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction shall quarterly as due, during their continuance in office, receive

for their services compensation, which for the term next ensuing after the adoption of this Constitution, is fixed as follows: Governor, three thousand dollars per annum; Secretary of State, one thousand and eight hundred dollars per annum; State Auditor, one thousand eight hundred dollars per annum; State Treasurer, one thousand dollars per annum; Attorney General, two thousand dollars per annum, and Superintendent of Public Instruction, one thousand five hundred dollars per annum. The Lieutenant Governor shall receive the same per diem as may be provided by law for the Speaker of the House of Representatives, to be allowed only during the sessions of the Legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

No officer named in this section shall receive for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty shall be collected in advance and deposited with the State Treasurer quarterly to the credit of the State. The Legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase shall affect the salaries of the officers then in office during their term: *Provided, however,* The Legislature may provide for the payment of actual and necessary expenses to the Governor, Lieutenant Governor, Secretary of State, Attorney General, and Superintendent of Public Instruction, while traveling within the State in the performance of official duty.

Cited: Stein v. Morrison (1904) 9 Ida. 426; 75 Pac. 246.

Fees of Officers: It is a part of the official duty of the Secretary of State to prepare the session laws and leg-

islative journals for the printer, and any fees which he receives for such services must be paid over into the State Treasury. Anderson v. Lewis (1898) 6 Ida. 51; 52 Pac. 163.

ARTICLE 5.

JUDICIAL DEPARTMENT.

Section.

1. Forms of action abolished.
2. Judicial power: Where vested.
3. Impeachment: Where and how tried.
4. Same: Conviction: Impeachment of Governor.
5. Treason defined and limited.
6. Supreme Court: Justices: Term of office.
7. Justices prohibited from holding other offices.
8. Terms of Supreme Court.
9. Jurisdiction of Supreme Court.
10. Jurisdiction over claims against the State.
11. District Courts: Judges and terms.
12. Residence of Judges: Holding court out of district.
13. Power of Legislature respecting courts.

Section.

14. Special courts in cities and towns.
15. Clerk of Supreme Court.
16. Clerks of District Court.
17. Salaries of Justices and Judges.
18. Prosecuting attorneys.
19. Vacancies: How filled.
20. Jurisdiction of District Court.
21. Jurisdiction of probate courts.
22. Jurisdiction of justices of the peace.
23. Qualifications of District Judges.
24. Judicial districts enumerated.
25. Defects in law to be reported by judges.
26. Court procedure to be general and uniform.
27. Change in compensation of officers.

Forms of Action Abolished.

Sec. 1. The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, are hereby prohibited; and there shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party against a person charged with a public offense for the punishment of the same, shall be termed a criminal action.

Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

Cited: Christensen v. Hollingsworth (1898) 6 Ida. 87; 53 Pac. 211; Anderson v. War Eagle Con. Min. Co. (1902) 8 Ida. 789; 72 Pac. 671; Coleman v. Jagers (1906) 12 Ida. 125; 85 Pac. 894.

Distinction Abolished: This section largely abrogates the distinction between cases at law and suits in equity, and now equitable remedies defined by statute, such as injunctions, are largely matters of right. Staples v. Rossi (1901) 7 Ida. 618; 65 Pac. 67.

Relief at law and equity may be granted in the same action, and may be granted if the facts pleaded and proved entitle the plaintiff to any relief, either legal, equitable, or both. Murphy v. Russell & Co. (1901) 8 Ida. 133; 67 Pac. 421. But this section does not abolish the rules of law and equity. Dewey v. Schreiber Implement Co. (1906) 12 Ida. 280; 85 Pac. 921.

Judicial Power: Where Vested.

Sec. 2. The judicial power of the State shall be vested in a court for the trials of impeachments, a Supreme Court, District Courts, probate courts, courts of justices of the peace, and such other courts inferior to the Supreme Court as may be established by law for any incorporated city or town.

Cited: Ada Co. v. Ryals (1895) 4 Ida. 365; 39 Pac. 556; Dewey v. Schreiber Implement Co. (1906) 12 Ida. 280; 85 Pac. 921.

Investiture of Judicial Power: Laws 1899, 345, Sec. 6, which vests in the board of medical examiners, created by the act of which such section is a part, the power to determine what is a reputable school of medicine such as to entitle the graduates thereof to take the examination for a physician's license, does not vest in the board such a judicial power as to render the act repugnant to this section of the Constitution. In re Inman (1902) 8 Ida. 398; 69 Pac. 120.

A coroner is not vested with judicial authority and does not act as a court in holding an inquest but in the performance of such duty acts ministerially only.

In re Sly (1904) 9 Ida. 779; 76 Pac. 766.

Laws 1903, 223, providing for the appropriation, diversion and adjudication of the rights to the use of the waters of the State, and which contains certain peculiar provisions as to the duties of the State Engineer, the apportionment of costs, the preparation and use of maps as evidence, etc., in proceedings for the adjudication of water rights, is not repugnant to this section. (Stockslager, J., dissents.) Boise Irr. etc. Co. v. Stewart (1904) 10 Ida. 38; 77 Pac. 25, 321.

The sections of the act which authorize the State Engineer to pass upon certain questions relating to the appropriation of water but which give an appeal to the court from decisions of the engineer are constitutional. *Ib.*

Impeachments: Where and How Tried.

Sec. 3. The court for the trial of impeachments shall be the Senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law.

Same: Conviction: Impeachment of Governor.

Sec. 4. The House of Representatives solely shall have the power

of impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected. When the Governor is impeached the Chief Justice shall preside.

Treason Defined and Limited.

Sec. 5. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession, in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture of estate.

Supreme Court: Justices: Term of Office.

Sec. 6. The Supreme Court shall consist of three Justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. The Justices of the Supreme Court shall be elected by the electors of the State at large. The terms of office of the Justices of the Supreme Court, except as in this article otherwise provided, shall be six years. The Justices of the Supreme Court shall, immediately after the first election under this Constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the Justices of the Supreme Court, who shall, for that purpose, assemble at the seat of government, and they shall cause the result thereof to be certified to by the Secretary of State and filed in his office. The Justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be Chief Justice, and shall preside at all terms of the Supreme Court, and, in case of his absence, the Justice having in like manner the next shortest term to serve shall preside in his stead.

Justices Prohibited from Holding Other Offices.

Sec. 7. No Justice of the Supreme Court shall be eligible to any other office of trust or profit under the laws of this State during the term for which he was elected.

Terms of Supreme Court.

Sec. 8. At least four terms of the Supreme Court shall be held annually; two terms at seat of the State government, and two terms at the City of Lewiston, in Nez Perce County. In case of epidemic, pestilence, or destruction of court houses, the Justices may hold terms of Supreme Court provided by this section at other convenient places, to be fixed by a majority of said Justices. After six years the Legislature may alter the provisions of this section.

Jurisdiction of Supreme Court.

Sec. 9. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the District Courts, or the Judges, thereof. The Supreme Court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction.

Cited: Tootle v. French (1891) 3 Ida. 1; 25 Pac. 1091; Miller v. Smith (1900) 7 Ida. 204; 61 Pac. 824; Wil-

son v. Bartlett (1900) 7 Ida. 269; 62 Pac. 415; Ponting v. Isman (1900) 7 Ida. 283; 62 Pac. 680; First Natl.

Bk. of Pocatello v. Bunting & Co. (1900) 7 Ida. 387; 63 Pac. 694; Chemung Min. Co. v. Hanley (1905) 11 Ida. 302; 81 Pac. 619; Dewey v. Schreiber Implement Co. (1906) 12 Ida. 280; 85 Pac. 921; Dahlstrom v. The Portland Min. Co. (1906) 12 Ida. 87; 85 Pac. 916; Eureka Min. etc. Co. v. Lewiston Nav. Co. (1906) 12 Ida. 472; 86 Pac. 49.

Appellate Jurisdiction: Where the statutes fail to provide for an appeal from a final judgment of the District Court, the Supreme Court will entertain a writ of error or other proper writ to bring such judgment before it for review. *State v. Reed* (1893) 3 Ida. 554; 32 Pac. 202.

This section does not give the State the right to appeal from a judgment in favor of the defendant in a criminal action, in the absence of a statute authorizing such appeal. *State v. Ridenabugh* (1897) 5 Ida. 710; 51 Pac. 750.

The right of appeal in a criminal case is absolute and in no wise dependent upon the innocence or guilt of the defendant. *In re Neil* (1905) 12 Ida. 749; 87 Pac. 881.

For additional cases construing appellate jurisdiction of the Supreme Court see note under Sec. 4807.

Writs of Prohibition: This section, in providing for the issuance of writs of prohibition, contemplates the issuance of such writs with the functions declared and defined under the existing territorial laws. *Williams v. Lewis* (1898) 6 Ida. 184; 54 Pac. 619. But this case was overruled and it was expressly held that the writ of prohibition authorized by the Constitution is a common law writ and will not lie to restrain purely ministerial acts. *Stein v. Morrison* (1904) 9 Ida. 426; 75 Pac. 246.

Ancillary Jurisdiction: The Supreme Court may allow attorneys' fees or suit money on appeal in a divorce case after the case has been filed in that court, when the same is necessary to the complete exercise of its appellate jurisdiction. *Roby v. Roby* (1903) 9 Ida. 371; 74 Pac. 957.

The Supreme Court has power to appoint a receiver to act pending litigation. *Chemung Mining Co. v. Hanley* (1905) 11 Ida. 302; 81 Pac. 619.

Jurisdiction Over Claims Against the State.

Sec. 10. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the Legislature for its action.

Cited: *Payne v. St. Brd. Wag. Rd. Comrs.* (1895) 4 Ida. 384; 39 Pac. 548; *Wis. Marine, etc. Co. v. State* (1898) 5 Ida. 785; 51 Pac. 983; *Geo. H. Fuller Desk Co. v. State* (1898) 6 Ida. 315; 55 Pac. 857.

Proceedings: In proceedings to obtain a decision recommending the payment of a claim for constructing a State wagon road, where it appeared that the contract price was consumed in paying for the original construction of the road which was destroyed by high water prior to the acceptance of the road by the State, after which the contractors rebuilt the washed out portion, the court rendered a decision recommending the payment by the Legislature of the value of the contractors work. *Winters v. State* (1897) 5 Ida. 198; 47 Pac. 855.

The Supreme Court will not hear any claims against the State until the same have been passed upon by the Board of Examiners. *Pyke v. Steunenberg* (1897) 5 Ida. 614; 51 Pac. 614.

This section does not authorize an action to condemn State lands to a public use, but such an action is authorized by Rev. St. Sec. 5212 in conjunction with laws 1899, 381, Sec. 13. *Hollister v. State* (1903) 9 Ida. 8; 71 Pac. 541.

The Supreme Court will not recommend to the Legislature the payment of a claim against the State, an action on which would be barred by the statute of limitations. *Small v. State* (1904) 10 Ida. 1; 76 Pac. 765.

District Courts: Judges and Terms.

Sec. 11. The State shall be divided into five judicial districts, for each of which a Judge shall be chosen by the qualified electors thereof, whose term of office shall be four years. And there shall be held a District Court in each county, at least twice in each year, to continue for such time in each county as may be prescribed by law; but the Legislature may reduce or increase the number of districts, District

Judges, and District Attorneys. This section shall not be construed to prevent the holding of special terms under such regulations as may be provided by law.

Cited: Heitman v. Morgan (1905)
10 Ida. 562; 79 Pac. 225.

Residence of Judges: Holding Court Out of District.

Sec. 12. Every Judge of the District Court shall reside in the district for which he is elected. A Judge of any District Court may hold a District Court in any county at the request of the Judge of the District Court thereof, and upon the request of the Governor it shall be his duty to do so; but a cause in the District Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause.

Cited: Gordon v. Conors (1897) 5
Ida. 673; 51 Pac. 747.

Judge Pro Tem: This section does not authorize the appointment of a non-resident as a judge pro tem. Bramwell v. Guheen (1892) 3 Ida. 347; 29 Pac. 110.

Disqualification of Judge: The fact that the judge is prejudiced

against one of the parties, is not ground for a change of venue, but in such a case the Governor may direct another judge to preside, and the Supreme Court would make the necessary order for the enforcement of the Governor's direction. (dis. op.) Day v. Day (1906) 12 Ida. 556; 86 Pac. 531.

Power of Legislature Respecting Courts.

Sec. 13. The Legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a co-ordinate department of the government; but the Legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this Constitution.

Special Courts in Cities and Towns.

Sec. 14. The Legislature may provide for the establishment of special courts for the trial of misdemeanors in incorporated cities and towns where the same may be necessary.

Clerk of Supreme Court.

Sec. 15. The Clerk of the Supreme Court shall be appointed by the Court, and shall hold his office during the pleasure of the Court. He shall receive such compensation for his services as may be provided by law.

Clerks of District Court.

Sec. 16. The Clerk of the District Court for each county shall be elected by the qualified voters thereof at the time and in the manner prescribed by law for the election of members of the Legislature and shall hold his office for the term of four years.

Cited: Hillard v. Shoshone Co.
(1891) 3 Ida. 103; 27 Pac. 678.

Salaries of Justices and Judges.

Sec. 17. The salary of the Justices of the Supreme Court, until

otherwise provided by the Legislature, shall be three thousand dollars each per annum, and the salary of the Judges of the District Court, until otherwise provided by the Legislature, shall be three thousand dollars each per annum, and no Justice of the Supreme Court or Judge of the District Court, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination, thirty days prior to taking and subscribing such oath.

Prosecuting Attorneys.

Sec. 18. A prosecuting attorney shall be elected for each organized county in the State, by the qualified electors of such county, and shall hold office for the term of two years, and shall perform such duties as may be prescribed by law; he shall be a practicing attorney at law, and a resident and elector of the county for which he is elected. He shall receive as compensation for his services a sum not less than five hundred dollars per annum, nor more than fifteen hundred dollars per annum, to be fixed by the board of commissioners of the county at its regular session in July next preceding any general election, and to be paid in quarterly installments out of the county treasury.

Senate Joint Resolution, approved March 5, 1895, (Laws 1895, 237) Ratified Nov. 3, 1906.

The section prior to amendment read as follows:

Sec. 18. A District Attorney shall be elected for each judicial district by the qualified electors thereof, who shall hold office for the term of four years, and perform such duties as may be prescribed by law. He shall be a practicing attorney at law and a resident and elector of the district. He shall receive as compensation, for his services twenty-five hundred dollars per annum.

Cited: Meller v. Board of Com-

missioners (1894) 4 Ida. 44; 35 Pac. 712; Conger v. Board of Commissioners (1897) 5 Ida. 347; 48 Pac. 1064; State v. McGann (1901) 8 Ida. 40; 66 Pac. 823.

Amendment: The amendment to this section substituting county prosecuting attorneys for the district attorneys was not self-executing, but required legislation to give it force and effect, and did not go into operation until the time fixed by law for county officers to qualify and enter upon the discharge of their duties (Concur. op.) Hays v. Hays (1897) 5 Ida. 154; 47 Pac. 732.

Vacancies: How Filled.

Sec. 19. All vacancies occurring in the offices provided for by this Article of the Constitution shall be filled as provided by law.

Jurisdiction of District Court.

Sec. 20. The District Court shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.

Cited: Murphy v. Russell & Co. (1901) 8 Ida. 151; 67 Pac. 427; First National Bank of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623; Dewey v. Schreiber Implement Co. (1906) 12 Ida. 280; 85 Pac. 921; Vane v. Jones (1907) 13 Ida.—; 88 Pac. 1058.

Equitable Jurisdiction: Equitable jurisdiction exists and will be exercised in all cases and under all cir-

cumstances where the remedy at law is not adequate, complete and certain, so as to meet the requirements of justice. Coleman v. Jagers (1906) 12 Ida. 125; 85 Pac. 894.

Concurrent Jurisdiction: The District Court has concurrent original jurisdiction with justices' courts over actions for a violation of the two-mile limit law. Risse v. Collins (1906) 12 Ida. 689; 87 Pac. 1006.

Jurisdiction of Probate Courts.

Sec. 21. The probate courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, and appointment of guardians; also jurisdiction to hear and determine all civil cases wherein the debt or damage claimed does not exceed the sum of five hundred dollars, exclusive of interest, and concurrent jurisdiction with justices of the peace in criminal cases.

Courts of Record—When: Probate courts are courts of record with original jurisdiction in all matters of probate and settlement of estates, and their orders and judgments in regard to such matters cannot be collaterally attacked, and can only be reviewed by proper motion in such courts or by appeal from their decisions. (Overruling *Ethol v. Nicholl*, 1 Ida. 741.) *Clark v. Rossier* (1904) 10 Ida. 348; 78 Pac. 358.

Probate courts are courts of record only in the exercise of their probate

and administrative jurisdiction. *Dewey v. Schreiber Implement Co.* (1906) 12 Ida. 280; 85 Pac. 921.

Jurisdiction: This section does not authorize the Legislature to extend the jurisdiction of probate courts to actions for the enforcement of mechanics' and laborers' liens, mortgages and other liens upon real property; probate courts have no equity jurisdiction except such as they may have in matters of probate, settlement of estates and appointment of guardians. *Ib.*

Jurisdiction of Justices of the Peace.

Sec. 22. In each county of this State there shall be elected justices of the peace as prescribed by law. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of property of the amount in controversy exceeds the sum of three hundred dollars, exclusive of interest, nor where the boundaries or title to any real property shall be called in question.

Cited: *Johnston v. Savidge* (1905) 11 Ida. 204; 81 Pac. 616.

Criminal Jurisdiction: Under Sec. 9 of the Organic Act which provided, among other things, that justices of the peace should not have jurisdiction when the debt or sum claimed exceeds \$100.00, it was held that the Legislature could not confer on justices of the peace jurisdiction over an offense punishable by fine not exceeding \$500.00. *People v. Maxon* (1870) 1 Ida. 330.

Civil Jurisdiction: This section does not extend the jurisdiction of justices to actions involving \$300 exclusive of interest, in the face of Rev. Stat. Sec. 3851 which fixes the jurisdiction at \$300 inclusive of interest, but merely prohibits the Legislature from fixing the sum in excess of \$300 exclusive of interest. *Quayle v. Glenn* (1899) 6 Ida. 549; 57 Pac. 308.

Qualifications of District Judges.

Sec. 23. No person shall be eligible to the office of District Judge unless he be learned in the law, thirty years of age, and a citizen of the United States, and shall have resided in the State or Territory at least two years next preceding his election, nor unless he shall have been at the time of his election, an elector in the judicial district for which he is elected.

Cited: *Shepherd v. Grimmett* (1892) 3 Ida. 403; 31 Pac. 793.

Judicial Districts Enumerated.

Sec. 24. Until otherwise provided by law, the judicial districts shall be five in number, and constituted of the following counties, viz:

First district, Shoshone and Kootenai; second district, Latah, Nez Perce and Idaho; third district, Washington, Ada, Boise and Owyhee; fourth district, Cassia, Elmore, Logan and Alturas; fifth district, Bear Lake, Bingham, Oneida, Lemhi and Custer.

Defects in Law to be Reported by Judges.

Sec. 25. The Judges of the District Courts shall, on or before the first day of July of each year, report in writing to the Justices of the Supreme Court, such defects or omissions in the laws as their knowledge and experience may suggest, and the Justices of the Supreme Court shall, on or before the first day of December of each year, report in writing to the Governor, to be by him transmitted to the Legislature, together with his message, such defects and omissions in the Constitution and laws as they find to exist.

Court Procedure to Be General and Uniform.

Sec. 26. All laws relating to courts shall be general and of uniform operation throughout the State, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments and decrees of such courts, severally, shall be uniform.

Laws Relating to Courts: Laws 1903, 223, providing for the appropriation, diversion and adjudication of the rights to the use of the waters of the State, and which contains certain peculiar provisions as to the duties of the State Engineer, the apportionment of costs, the preparation and use of maps as evidence, etc., in proceedings for the adjudication of water rights, is not repugnant to this section. (Stockslager, J., dissents.) *Boise Irr. etc. Co. v. Stewart* (1904) 10 Ida. 38; 77 Pac. 25, 321.

Sec. 34 of Laws 1903, 223, relative to the distribution of water and adjudication of water rights, which authorizes a suit for adjudication of water rights to be brought against "all claimants of a right to the use of the water" of the stream in ques-

tion, without naming the defendants, or requiring any effort for personal service on such defendants as might be found, is repugnant to this section, *Bear Lake Co. v. Budge* (1904) 9 Ida. 703; 75 Pac. 614.

Laws 1903, 223, Sec. 35, which requires the costs and attorneys fees in a suit to adjudicate the waters of a stream, to be paid by the county, is repugnant to this section. *Ib.*

Laws 1903, 223, Sec. 36, which provides that during the pendency of an action to adjudicate the waters of a stream, the use of the water shall be under the control of the Water Commissioner and that he shall be authorized to issue all needful rules for the distribution of the water to the defendants, is repugnant to this section. *Ib.*

Change in Compensation of Officers.

Sec. 27. The Legislature may by law diminish or increase the compensation of any or all of the following officers, to-wit: Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of Immigration and Labor, Justices of the Supreme Court, and Judges of the District Courts and District Attorneys, but no diminution or increase shall affect the compensation of the officer then in office during his term. *Provided, however,* That the Legislature may provide for the payment of actual and necessary expenses of the Governor, and the Secretary of State, Attorney General, and Superintendent of Public Instruction incurred while in performance of official duty.

ARTICLE 6.

SUFFRAGE AND ELECTIONS.

Section

1. Secret ballot guaranteed.
2. Qualifications of electors.
3. Disqualification of certain persons.

Section

4. Legislature may prescribe additional qualifications.
5. Residence for voting purposes not lost or gained.

Secret Ballot Guaranteed.

Sec. 1. All elections by the people must be by ballot. An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the Legislature to enact such laws as shall carry this section into effect.

Qualifications of Electors.

Sec. 2. Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this State or Territory for six months, and in the county where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the Legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

Senate Joint Resolution, approved Jan. 21, 1895, (Laws 1895, 232). Ratified Nov. 3, 1896.

The section prior to amendment read as follows:

Sec. 2. Except as in this article otherwise provided, every male citizen of the United States, twenty-one years old, who has actually resided in the State or Territory for six months, and in the county where he offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the Legislature, women who have the qualifications prescribed in this article, may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

Cited: Powell v. Spackman (1901) 7 Ida. 693; 65 Pac. 503.

Registration Unnecessary: Registration is not a substantive qualification of an elector in this State. Registration is intended only as a regulation of the exercise of the right of

suffrage and not as a qualification for such right. The terms "elector" and "qualified elector" are used interchangeably, and an elector is a qualified elector. (Quarles, J., dissents.) Wilson v. Bartlett (1900) 7 Ida. 271; 62 Pac. 416.

Bond Elections: This section only prescribes the qualifications of a voter at a general election, and is not infringed by a provision of a municipal charter imposing a property qualification on the right to vote on the question of incurring a municipal indebtedness. Wiggin v. City of Lewiston (1902) 8 Ida. 527; 69 Pac. 286.

Disqualifications: No disqualification to hold office on account of sex which may exist under this section, can be raised in a proceeding, instituted after the wrongful removal of the officer, to compel her to deliver the papers of the office to her alleged successor. Village of Kendrick v. Nelson (1907) 13 Ida. —; 89 Pac. 755.

Disqualification of Certain Persons.

Sec. 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his

vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist, or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this State, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of or contributes to the support, aid, or encouragement of any order, organization, association, corporation or society, which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy, or such patriarchal, plural or celestial marriage, or which teaches or advises that the laws of this State prescribing rules of civil conduct, are not the supreme law of the State; nor shall Chinese, or persons of Mongolian descent, not born in the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office.

Cited: Powell v. Spackman (1901) 7 Ida. 693; 65 Pac. 503.

Requirement of Test Oath: This section is not violated by the act of February 25, 1891, prescribing a test

oath containing conditions of suffrage additional to those prescribed by this section. Shepherd v. Grimmett (1892) 3 Ida. 403; 31 Pac. 793.

Legislature May Prescribe Additional Qualifications.

Sec. 4. The Legislature may prescribe qualifications, limitations, and conditions for the right of suffrage additional to those prescribed in this article, but shall never annul any of the provisions in this article contained.

Cited: Powell v. Spackman (1901) 7 Ida. 693; 65 Pac. 503.

Requirement of Test Oath: This section authorizes the Legislature to prescribe a test oath as a condition of suffrage, embracing clauses additional to those contained in Section 3 of this article. Shepherd v. Grimmett (1892) 3 Ida. 408; 31 Pac. 793.

Property Qualifications: This section is sufficiently broad to empower the Legislature to prescribe property qualifications on the right to vote in elections to create an indebtedness. Wiggin v. City of Lewiston (1902) 8 Ida. 527; 69 Pac. 286.

Residence for Voting Purposes Not Lost or Gained.

Sec. 5. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State, or of the United States, nor while engaged in the navigation of the waters of this State or of the United States, nor while a student of any institution of learning, nor while kept at any alms house or other asylum at the public expense.

Inmates of Soliders' Home: Under the provisions of this section, inmates of the Soldiers' Home cannot acquire by reason of their presence in such Soldiers' Home, and while kept at

public expense, the right to vote in the county and precinct in which such institution is located. (Sullivan, J., dissents). Powell v. Spackman (1901) 7 Ida. 693; 65 Pac. 503.

ARTICLE 7.

FINANCE AND REVENUE.

Section

1. Fiscal year.
2. Revenue to be provided by taxation.
3. Property to be defined and classified.
4. Public property exempt from taxation.
5. Taxes to be uniform: Exemptions.
6. Municipal corporations to impose their own taxes.
7. State taxes to be paid in full.
8. Corporate property must be taxed.

Section

9. Maximum rate of taxation.
10. Making profit from public money prohibited.
11. Expenditure not to exceed appropriation.
12. State Board of Equalization.
13. Money: How drawn from treasury.
14. Same: How drawn from county treasury.
15. Legislature to provide system of county finance.
16. Legislature to pass necessary laws.

Fiscal Year.

Sec. 1. The fiscal year shall commence on the second Monday of January in each year, unless otherwise provided by law.

Revenue to be Provided by Taxation.

Sec. 2. The Legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article herein otherwise provided. The Legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this State); also a percapita tax: *Provided*, The Legislature may exempt a limited amount of improvements upon land from taxation.

Cited: State v. Doherty (1892) 3 Ida. 384; 29 Pac. 855; Stein v. Morrison (1904) 9 Ida. 426; 75 Pac. 246; State v. Jones (1904) 9 Ida. 693; 75 Pac. 819; Humbird Lbr. Co. v. Thompson (1905) 11 Ida. 614; 83 Pac. 941.

License Tax: The license tax authorized by this section is not restricted to the single purpose of raising revenue. State v. Union etc. Ins. Co. (1902) 8 Ida. 240; 67 Pac. 647.

Property to be Defined and Classified.

Sec. 3. The word "property" as herein used shall be defined and classified by law.

Public Property Exempt from Taxation.

Sec. 4. The property of the United States, the State, counties, towns, cities and other municipal corporations and public libraries shall be exempt from taxation.

Taxes to be Uniform: Exemptions.

Sec. 5. All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: *Provided*, That the Legislature may allow such exemptions from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the Legislature of the State;

Provided, further, That duplicate taxation of property for the same purpose during the same year, is hereby prohibited.

Cited: Salisbury v. Lane (1900) 7 Ida. 370; 63 Pac. 383; Humbird Lbr. Co. v. Thompson (1905) 11 Ida. 614; 83 Pac. 941.

Provision Self-Acting: The constitutional requirement of uniformity of taxation is self-acting, and applies to all officers and boards that have anything to do with the levy and assessment of taxes. Orr v. State Board of Equalization (1891) 3 Ida. 190; 28 Pac. 416.

License Taxes: A graduated license tax imposed on the liquor traffic does not violate the requirement of equality of taxation imposed by this section. State v. Doherty (1892) 3 Ida. 384; 29 Pac. 855.

Double Taxation: It is not double taxation to levy a tax on billiard tables according to their value, and

at the same time to require the proprietor thereof to pay a license tax under Rev. Stat. Sec. 1645. State v. Jones (1904) 9 Ida. 693; 75 Pac. 819.

The prohibition of double taxation contained in this section is directed against the taxing of the same property twice during the same year for the same purpose, while other like and similar property is taxed only once during the same period for that purpose. It does not extend to prevent a special levy, for road purposes only, under Laws 1901, 78, on all property of the county, although such property is also taxed in the general levy for the road funds of the county. Humbird Lumber Co. v. Kootenai Co. (1904) 10 Ida. 490; 79 Pac. 396.

Municipal Corporations to Impose Their Own Taxes.

Sec. 6. The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

Cited: City of Genesee v. Latah Co. (1894) 4 Ida. 141; 36 Pac. 701; McConnell v. State Bd. etc. (1905) 11 Ida. 652; 83 Pac. 494.

Application—License Taxes: This section relates to taxes properly speaking, and does not apply to license taxes so as to render unconstitutional Rev. St., Sec. 1644 which imposes license taxes the proceeds of which may be retained for the use of the county in which they are col-

lected. State v. Union etc. Ins. Co. (1902) 8 Ida. 240; 67 Pac. 647.

Special Taxes: This section does not prohibit the Legislature from authorizing and requiring the county commissioners to levy a special ad valorem tax for the purpose of liquidating the existing indebtedness of the counties to the State. Gooding v. Proffitt (1905) 11 Ida. 380; 83 Pac. 230.

State Taxes to be Paid in Full.

Sec. 7. All taxes levied for State purposes shall be paid into the State Treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes.

Cited: State v. Ada Co. (1900) 7 Ida. 261; 62 Pac. 457.

Provision Self-Acting: This section of the constitution is self-acting and goes into effect without any legislation. Cunningham v. Moody (1891) 3 Ida. 125; 35 Am. St. Rep. 269; 28 Pac. 395.

Payment of Taxes to State: All taxes collected for state purposes must be paid into the State Treasury without any deduction for fees or commissions for collecting the same. Guheen v. Curtis (1892) 3 Ida. 443; 31 Pac. 805.

Corporate Property Must be Taxed.

Sec. 8. The power to tax corporations or corporate property, both real and personal, shall never be relinquished or suspended, and all corporations in this State or doing business therein, shall be subject to taxation for State, county, school, municipal, and other purposes, on real and personal property owned or used by them, and not by

this Constitution exempted from taxation within the territorial limits of the authority levying the tax.

Cited: Guheen v. Curtis (1892) 3 Ida. 443; 31 Pac. 805.

Maximum Rate of Taxation.

Sec. 9. The rate of taxation of real and personal property for State purposes shall never exceed ten (10) mills on each dollar of assessed valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

Senate Joint Resolution, passed March 2, 1905, (Laws 1905, 441). Ratified Nov. 6, 1906.

The section prior to amendment read as follows:

Sec. 9. The rate of taxation of real and personal property for State purposes shall never exceed ten (10) mills on each dollar of assessed valuation; and if the taxable property in the State shall amount to fifty million (50,000,000) dollars the rate shall not exceed five (5) mills on each dollar of valuation; and whenever the taxable property in the State shall amount to one hundred million (100,000,000) dollars, the rate shall not exceed three (3) mills on each dollar of valuation; and whenever the taxable property of the State shall amount to three hundred million (300,000,000) dollars the rate shall never thereafter exceed one and one-half (1½) mills on each dollar of valuation, unless a proposition to in-

crease such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

Cited: (Concur. op.) Green v. State Board Canvassers (1896) 5 Ida. 130; 47 Pac. 259.

Limit of Taxation: The tax levy for state purposes is intended to cover the current and running expenses of maintaining and conducting the State Government and the operation and maintenance of the State institutions, and the maximum limit of taxation specified hereby does not include an additional levy for the purpose of paying the interest on, and providing a sinking fund for, the public or bonded indebtedness of the State incurred under Sec. 1 of Art. 8 of the Constitution. Gooding v. Proffit (1905) 11 Ida. 380; 83 Pac. 230.

Making Profit from Public Money Prohibited.

Sec. 10. The making of profit, directly or indirectly, out of State, county, city, town, township, or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

Expenditure Not to Exceed Appropriation.

Sec. 11. No appropriation shall be made, nor any expenditure authorized by the Legislature, whereby the expenditure of the State during any fiscal year shall exceed the total tax then provided by law, and applicable to such appropriation or expenditure, unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine (9) of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the State, or assist in defending the United States in time of war.

Cited: Gooding v. Proffit (1905) 11 Ida. 380; 83 Pac. 230.

Excessive Appropriation Bill: The fact that an appropriation bill passed

by the Legislature, appropriates money in excess of the general tax levied to cover the appropriation, does not render the appropriation repugnant to this section, in the absence of a showing that the estimated reve-

nue to be derived from the State from other sources, such as license and per capita taxes and fees of officers, will be insufficient to make up the deficiency. *Stein v. Morrison* (1904) 9 Ida. 426; 75 Pac. 246.

State Board of Equalization.

Sec. 12. There shall be a State Board of Equalization, consisting of the Governor, Secretary of State, Attorney General, State Auditor, and State Treasurer, whose duties shall be prescribed by law. The board of county commissioners for the several counties of the State, shall constitute boards of equalization for their respective counties, whose duties it shall be to equalize the valuation of the taxable property in the county, under such rules and regulations as shall be prescribed by law.

Assessment of Omitted Property: This section is not infringed by Rev. St., Sec. 1483, as amended by Laws 1899, 454, which authorizes the Board of Equalization to require the assessor to assess any taxable property that has escaped assessment; increase valuations, or add to the amount, number, quantity or value of property. *Murphy v. Board of Equalization* (1899) 6 Ida. 745; 59 Pac. 715.

Nature of Board: The board of county commissioners when sitting as a Board of Equalization, is a distinct body, with distinct duties and functions, and its orders made while sitting as such board are not subject to the provisions of statutes authorizing appeals from the board of county commissioners. *Feltham v. Board of Commrs.* (1904) 10 Ida. 182; 77 Pac. 332.

Money: How Drawn from Treasury.

Sec. 13. No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

Necessity of Appropriation: An attorney employed by the State Auditor pursuant to Rev. St., Sec. 1685, which authorizes such employment and provides that the expense must be paid out of the State Treasury, is not entitled to a warrant in payment for his services until an appropriation is made therefor. *Kingsbury v. Anderson* (1898) 5 Ida. 771; 51 Pac. 744.

While the Board of Examiners may allow a claim which they find to be

correct, yet no warrant can issue therefor until the Legislature makes an appropriation to cover the same. *Kroutinger v. Board of Examiners* (1902) 8 Ida. 463; 69 Pac. 279.

Where an act creating an office fixes the compensation of the officer and time of payment, and authorizes the comptroller to draw his warrant to pay the same when due, no further appropriation is required. *Gilbert v. Moody* (1891) 3 Ida. 3; 25 Pac. 1092.

Same: How Drawn from County Treasuries.

Sec. 14. No money shall be drawn from the county treasuries except upon the warrant of a duly authorized officer, in such manner and form as shall be prescribed by the Legislature.

Legislature to Provide System of County Finance.

Sec. 15. The Legislature shall provide by law, such a system of county finance, as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that whenever any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners, in addition to other taxes provided by law, shall levy a special tax, not to exceed ten (10) mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and

after the levy of such special tax, all warrants issued before such levy, shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund.

Funding Bonds Not Prohibited:
This section, in requiring the business of counties to be conducted on a cash basis, does not preclude the Legislature from authorizing counties to is-

sue bonds for the purpose of taking up outstanding warrants and refunding bonds already issued. *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277.

Legislature to Pass Necessary Laws.

Sec. 16. The Legislature shall pass all laws necessary to carry out the provisions of this article.

ARTICLE 8.

PUBLIC INDEBTEDNESS AND SUBSIDIES.

Section

1. Limitations on public indebtedness.
2. Credit of State shall not be given or loaned.

Section

3. Limitations on county and municipal indebtedness.
4. County, etc., not to loan or give its credit.

Limitation on Public Indebtedness.

Sec. 1. The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the Territory at the date of its admission as a state, exceed the sum of one and one-half per centum upon the assessed value of the taxable property in the State, except in case of war to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due; and also for the payment and discharge of the principal of such debt or liability, within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by the authority of such law, shall be applied only to the specified object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may, at any time after the approval of such law, by the people, if no debt shall have been contracted in the pursuance thereof, repeal the same.

Cited: (Concur. op.) *Green v. State Board of Canvassers* (1896) 5 Ida. 130; 47 Pac. 259; *Gooding v. Proffitt* (1905) 11 Ida. 380; 83 Pac. 230.

Application: The article of which this section is a part, provides for the general subject of State indebtedness

to be incurred for such objects as the erection of public buildings, the meeting of extraordinary expenses, such as may be incurred in case of war, etc., and does not apply to the ordinary current expenses of the State which are provided for in Art. 7.

Stein v. Morrison (1904) 9 Ida 426; 75 Pac. 246.

Excessive Appropriation Bill: The fact that the general appropriation bill covering the expenses of the State

for the next two years, provides for expenditures in excess of the revenue provided for by the general tax levy, does not create a debt within the meaning of this section. *Ib.*

Credit of State Shall Not be Given or Loaned.

Sec. 2. The credit of the State shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation; nor shall the State directly or indirectly, become a stockholder in any association or corporation.

Limitations on County and Municipal Indebtedness.

Sec. 3. No county, city, town, township, board of education, or school district, or other subdivision of the State shall incur any indebtedness, or liability in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: *Provided*, That this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the State.

Cited: (Concur. op.) Green v. State Board of Canvassers (1896) 5 Ida. 130, 47 Pac. 259; Andrews v. Board Commrs. Ada Co. (1900) 7 Ida. 453; 62 Pac. 592.

Object of Section: The object and purpose of this provision is to maintain the credit of the State and counties by keeping them upon a cash basis. *Co. of Ada v. Bullen Bridge Co.* (1896) 5 Ida. 79; 47 Pac. 818; *Ball v. Bannock Co.* (1897) 5 Ida. 602; 51 Pac. 454.

Provisions Mandatory: The authority of boards of county commissioners in creating debts is limited by the Constitution and statutes of the State, and must be exercised within those limits, and at least with a substantial compliance with the mode prescribed; the provisions of the Constitution are mandatory and must be complied with. *Dunbar v. Commrs.* (1897) 5 Ida. 407; 49 Pac. 409.

Prohibited Indebtedness: County commissioners cannot incur a debt for a court house site without submitting the question to a popular vote. *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277. The issuance of funding bonds which increase the county indebtedness is within the prohibitions of this section. *Ib.* Municipal indebtedness incurred during a given fiscal year, cannot be paid out of the income or revenue of a future year, unless such revenue is especially

raised for the payment of such indebtedness. *Theiss v. Hunter* (1896) 4 Ida. 788; 45 Pac. 2. The construction of a bridge involving an expenditure equal to more than half of the revenue of a county for the year, is an extraordinary expense. *Co. of Ada v. Bullen Bridge Co.* (1896) 5 Ida. 79; 47 Pac. 818. The building of a bridge and the payment of scalp bounties are extraordinary expenses. *Dunbar v. Board of Commrs.* (1897) 5 Ida. 407; 49 Pac. 409; *Gillette-Herzog Mfg. Co. v. Canyon Co.* (1898) 85 Fed. Rep. 396. The issuance of county warrants in excess of the county's revenue, for the construction of a wagon road is unauthorized except by a compliance with this section. *McNutt v. Lemhi Co.* (1906) 12 Ida. 63; 84 Pac. 1054.

Same—Necessity of Expenditure: Expenditures made in excess of the revenue of any current year must not only be for ordinary expenses, such as are usual to the maintenance of the county government, the conduct of necessary business, and the protection of its property, but there must exist a necessity for making the expenditure during such year. *Dunbar v. Board of Commrs.* (1897) 5 Ida. 407; 49 Pac. 409.

Indebtedness not Prohibited: The provisions of this section apply only to a debt contracted for an extraordinary expense in excess of the revenue provided for the year; it does not pro-

hibit the purchase of real estate for a court house, where the cost will not create an indebtedness in excess of the current revenue after deducting the indebtedness incurred by the county up to the time of the purchase. *Ball v. Bannock Co.* (1897) 5 Ida. 602; 51 Pac. 454.

The provisions of this section authorize the issuance of municipal bonds to take up the outstanding indebtedness of the city incurred for the current pay of officers and the ordinary expenses of the city. *Butler v. City of Lewiston* (1905) 11 Ida. 393; 83 Pac. 234.

Municipal obligations, such as for the construction of sewers, required to be paid out of special assessments levied against property particularly benefited, are not an indebtedness or liability within the meaning of this section, and may be incurred, when the statute so provides, without submission of the question to popular vote. *McGilvery v. City of Lewiston* (1907) 13 Ida. —; 90 Pac. 348.

Provision for Sinking Fund: Rev. Stat., Sec. 3602, as amended by Laws 1891, 200, which, in providing for the funding of county indebtedness, requires the commissioners to levy a sufficient tax to pay the interest on the funding bonds, and, at least one year before the bonds become due, to levy a sufficient additional sum to pay the same, authorizes adequate provisions for paying the interest on the bonds and for the creation of a sinking fund for their redemption, sufficiently to comply with this section. *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277.

Where the city council provided by ordinance for the levy of an annual tax for the payment of all interest to

accrue on funding bonds about to be issued, and also by such ordinance provided for the levy of an annual tax after the year 1909 to constitute a sinking fund for the payment of the principal of such bonds, the provisions of this section are complied with, and bonds issued under such ordinance are valid. *Boise City v. Union Bank & Trust Co.* (1900) 7 Ida. 342; 63 Pac. 107.

Effect of Violation: Warrants issued in violation of this provision are void. *Co. of Ada v. Bullen Bridge Co.* (1896) 5 Ida. 79; 47 Pac. 818.

A debt created in contravention of the provisions of this section cannot be changed into the form of a negotiable instrument and thus defeat the object of the Constitution. *Dunbar v. Board Commrs.* (1897) 5 Ida. 407; 49 Pac. 409.

Where an extraordinary indebtedness is incurred by a county without complying with this section, the act of the county in thereafter issuing bonds sufficient to cover such indebtedness and all other indebtedness of the county, does not constitute a ratification of the unlawful indebtedness such as to render the same enforceable against the county. *McNutt v. Lemhi Co.* (1906) 12 Ida. 63; 84 Pac. 1054.

Bond Elections—Suffrage: This provision of the Constitution which requires the assent of two-thirds of the qualified electors in the incurrence of a municipal debt, and prescribes no property qualifications as to such electors, is not infringed by a provision of a municipal charter which requires the assent of two-thirds of the qualified electors who are taxpayers to the incurrence of such a debt. *Wiggin v. City of Lewiston* (1902) 3 Ida. 527; 69 Pac. 286.

County, etc., not to Loan or Give Its Credit.

Sec. 4. No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or incorporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this State.

ARTICLE 9.

EDUCATION AND SCHOOL LANDS

Section

1. Legislature to establish system of free schools.
2. Board of education.
3. Public school fund to remain intact.
4. Public school fund defined.

Section

5. Sectarian appropriations prohibited.
6. Religious test and teaching in schools prohibited.
7. State Board of Land Commissioners.

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| 8. Location and disposition of public lands.
9. Compulsory attendance on schools. | 10. State University; Location, regents and lands.
11. Loaning educational funds. |
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Legislature to Establish System of Free Schools.

Sec. 1. The stability of a Republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature of Idaho, to establish and maintain a general uniform and thorough system of public, free common schools.

Board of Education.

Sec. 2. The general supervision of the public schools of the State shall be vested in a Board of Education, whose powers and duties shall be prescribed by law; the Superintendent of Public Instruction, the Secretary of State and Attorney General, shall constitute the Board, of which the Superintendent of Public Instruction shall be president.

Public School Fund to Remain Intact.

Sec. 3. The public school fund of the State shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the State, and shall be distributed among the several counties and school districts of the State in such a manner as may be prescribed by law. No part of this fund, principal and interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The State Treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The State shall supply all losses thereof that may in any manner occur.

Diversion of School Fund: No part of the permanent school fund of the State can be expended in the payment of forfeitures imposed by the statute law of the State. The Constitution expressly prohibits the Legislature from enacting a law that would divert one dollar of such fund

otherwise than as provided by the Constitution, and any law enacted by the Legislature diverting such funds for purposes other than those specified by the Constitution, would be unconstitutional. *State v. Fitzpatrick* (1897) 5 Ida. 499; 51 Pac. 112.

Public School Fund Defined.

Sec. 4. The public school fund of the State shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the State by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation, under any law or grant of the general government, and of all other grants of land or money made to the State from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the State; all unclaimed shares and dividends of any corporation incorporated under the laws of the State; and all other grants, gifts, devises, or bequests made to the State for general educational purposes.

Proceeds of Lands: Under this section, together with Sec. 5 and 8 of the Admission Bill, the interest or in-

come from the proceeds of the sale of University lands can only be used in the support and maintenance of the

University, and in the payment of the current expenses thereof and the charges for conducting the same, and cannot be used for the erection or

equipment of University buildings. *Roach v. Gooding* (1905) 11 Ida. 244; 81 Pac. 642.

Sectarian Appropriations Prohibited.

Sec. 5. Neither the Legislature, nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in the aid of any church or sectarian, or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian or religious purpose.

Religious Test and Teaching in School Prohibited.

Sec. 6. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

State Board of Land Commissioners.

Sec. 7. The Governor, Superintendent of Public Instruction, Secretary of State and Attorney General shall constitute the State Board of Land Commissioners, who shall have the direction, control and disposition of the public lands of the State, under such regulations as may be prescribed by law.

Location and Disposition of Public Lands.

Sec. 8. It shall be the duty of the State Board of Land Commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be, granted to the State by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: *Provided*, That no school lands shall be sold for less than ten (10) dollars per acre. No law shall ever be passed by the Legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be dimin-

ished, directly or indirectly. The Legislature shall, at the earliest practicable period, provide by law that the general grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of lands were made, and the Legislature shall provide for the sale of said lands from time to time and for the sale of timber on all State lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: *Provided*, That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed one hundred and sixty (160) acres to any one individual, company or corporation.

Cited: State v. Fitzpatrick (1897)
5 Ida. 499; 51 Pac. 112.

Compulsory Attendance on Schools.

Sec. 9. The Legislature may require by law that every child of sufficient mental and physical ability shall attend the public school throughout the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means.

State University: Location, Regents and Lands.

Sec. 10. The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the Territory of Idaho are hereby perpetuated unto the said University. The regents shall have the general supervision of the University, and the control and direction of all the funds of, and appropriations to, the University, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.

Loaning Educational Funds.

Sec. 11. The permanent educational funds other than funds arising from the disposition of university lands belonging to the State, shall be loaned on first mortgage or improved farm lands within the State; State, United States, or school district bonds, or State warrants, under such regulations as the Legislature may provide. *Provided*. That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings.

Senate Joint Resolution, passed March 3, 1899 (Laws 1899, 330), Ratified Nov. 6, 1900.

This section prior to amendment read as follows:

Sec. 11. The permanent educational funds, other than funds arising from the disposition of University lands belonging to the State, shall be loaned on first mortgage on im-

proved farm lands within the State, or on State or United States bonds, under such regulations as the Legislature may provide: *Provided*, That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings.

Cited: State v. Fitzpatrick (1897)
5 Ida. 499; 51 Pac. 112.

ARTICLE 10.

PUBLIC INSTITUTIONS.

Section

1. State to establish and support institutions.
2. Seat of government.
3. Same: Change in location.
4. Property of Territory becomes property of State.

Section

5. State Prison Commissioners.
6. Directors of Insane Asylum.
7. Change in location of institutions.

State to Establish and Support Institutions.

Sec. 1. Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law.

Seat of Government.

Sec. 2. The seat of government of the State of Idaho shall be located at Boise City for twenty years from the admission of the State, after which time the Legislature may provide for its relocation, by submitting the question to a vote of the electors of the State at some general election.

Same: Change in Location.

Sec. 3. The Legislature may submit the question of the location of the seat of government to the qualified voters of the State at the general election, then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislature shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the next general election.

Property of Territory Becomes Property of State.

Sec. 4. All property and institutions of the Territory, shall, upon adoption of the Constitution, become the property and institutions of the State of Idaho.

State Prison Commissioners.

Sec. 5. The Governor, Secretary of State and Attorney General shall constitute a board to be known as the State Prison Commissioners, and shall have control, direction and management of the penitentiaries of the State. The Governor shall be chairman, and the board shall appoint a warden, who may be removed at pleasure. The warden shall have the power to appoint his subordinates, subject to the approval of the said board.

Management of Penitentiary: Since this section confers on the Board of Prison Commissioners the management and control of the Penitentiary, the Legislature has no power to take from the Board such management and control, or to make any rules and

regulations for the government of the Board which would in any way interfere with the efficient management and control of the institution. *Ackley v. Perrin* (1905) 10 Ida. 531; 79 Pac. 192.

Meetings of Board: The Board of State Prison Commissioners created by this section, may meet at such times as they deem necessary; a majority of the officers constituting the Board may hold a meeting and transact any business which the Board is

authorized to transact, and it is not necessary for them to give notice to a member of the Board who is, at the time of calling and holding the meeting, beyond the jurisdiction of the State. (Stockslager, J., dissents.) Ib.

Directors of Insane Asylum.

Sec. 6. There shall be appointed by the Governor three directors of the asylum for the insane, who shall be confirmed by the Senate. They shall have the control, direction and management of the said asylums, under such regulations as the Legislature shall provide, and hold their offices for a period of two years. The directors shall have the appointment of the medical superintendent, who shall appoint the assistants with the approval of the directors.

Cited: (Dis. op.) Pyke v. Steunenberg (1897) 5 Ida. 614; 51 Pac. 614;

Ackley v. Perrin (1905) 10 Ida. 531; 79 Pac. 192.

Change in Location of Institutions.

Sec. 7. The Legislature for sanitary reasons may cause the removal to more suitable localities of any of the institutions mentioned in section one of this article.

ARTICLE 11.

CORPORATIONS, PUBLIC AND PRIVATE.

Section

1. Certain grants and charters invalidated.
2. Special charters prohibited.
3. Revocation and alteration of charters.
4. Shares of stock; How voted.
5. Regulation and control of railroads.
6. Equal transportation rights guaranteed.
7. Acceptance of Constitution by corporations.
8. Right of eminent domain and police power reserved.
9. Increase in capital stock.

Section

10. Regulation of foreign corporations.
11. Constructing railroad in city or town.
12. Retroactive laws favoring corporations prohibited.
13. Telegraph and telephone companies.
14. Consolidation of corporations with foreign corporations.
15. Transfer of franchises.
16. Term "corporation" defined.
17. Liability of stockholders: Dues.
18. Combinations in restraint of trade prohibited.

Certain Grants and Charters Invalidated.

Sec. 1. All existing charters or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

Special Charters Prohibited.

Sec. 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the State; but the Legislature shall provide by general law for the organization of corporations hereafter to be created: *Provided*, That any such general law shall be subject to future repeal or alteration by the Legislature.

Cited: *Wiggin v. City of Lewiston* (1902) 8 Ida. 527; 69 Pac. 286.

Special Legislation: This section prohibits the enactment of local or special laws on the subjects therein enumerated, but leaves the Legislature master of its own discretion in passing special laws on subjects not prohibited by the Constitution. *Butler v. City of Lewiston* (1905) 11 Ida. 393; 83 Pac. 234.

Joint Stock Companies: The provision of this section which requires the Legislature to provide by general law for the organization of corporations, is directed exclusively to the

Legislature, and is not operative without Legislative action; the provision does not prevent individuals from organizing a joint stock company having attributes different from those of ordinary corporations. *Spotswood v. Morris* (1906) 12 Ida. 360; 85 Pac. 1094.

This section has no application to a voluntary joint stock company which has no franchise of incorporation, and which exercises no powers or privileges of a corporation which are not possessed by individuals or partnerships. *Ib.*

Revocation and Alteration of Charters.

Sec. 3. The Legislature may provide by law for altering, revoking, or annulling any charter of incorporation existing and revocable at the time of the adoption of this Constitution, in such manner, however, that no injustice shall be done to the corporators.

Amendment of Municipal Charters: The charter of the City of Lewiston, which antedates the Constitution, may

be amended by the Legislature. *Wiggin v. City of Lewiston* (1902) 8 Ida. 527; 69 Pac. 286.

Shares of Stock: How Voted.

Sec. 4. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the numbers of directors multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner.

Cited: *Olympia Mining Co. v. Kerns* (1907) 13 Ida. —; 91 Pac. 92.

Regulation and Control of Railroads.

Sec. 5. All railroads shall be public highways, and all railroad, transportation, and express companies shall be common carriers, and subject to legislative control, and the Legislature shall have the power to regulate and control by law, the rate of charges for the transportation of passengers and freight by such companies or other common carriers from one point to another in the State. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within the State, and to connect within or at the State line with railroads of other states and territories. Every railroad company shall have the right with its road, to intersect, connect with, or cross any other railroad, under such regulations as may be prescribed by law, and upon making due compensation.

Equal Transportation Rights Guaranteed.

Sec. 6. All individuals, associations, and corporations, similarly situated shall have equal rights to have persons or property trans-

ported on and over any railroad, transportation, or express route in the State, except that preference may be given to perishable property. No undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class, by any railroad, or transportation, or express company, between persons or places within the State; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad, or transportation, or express company shall be allowed to charge, collect or receive, under penalties which the Legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers, to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State. No railroad, express, or transportation company, nor any lessee, manager, or other employee thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power or for the transportation of money or other express matter.

Acceptance of Constitution by Corporations.

Sec. 7. No corporation other than municipal corporations in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, without first filing in the office of the Secretary of State an acceptance of the provisions of this Constitution in binding form.

Right of Eminent Domain and Police Power Reserved.

Sec. 8. The right of eminent domain shall never be abridged, nor so construed as to prevent the Legislature from taking the property and franchise of incorporated companies, and subjecting them to public use, the same as property of individuals; and the police powers of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the State.

Increase in Capital Stock.

Sec. 9. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting, held after at least thirty days' notice given in pursuance of law.

Regulation of Foreign Corporations.

Sec. 10. No foreign corporation shall do any business in this State without having one or more known places of business, and, an authorized agent or agents in the same, upon whom process may be served, and no company or corporation formed under the laws of any other country, State, or Territory, shall have or be allowed to exercise or enjoy, within this State any greater rights or privileges

than those possessed or enjoyed by corporations of the same or similar character created under the laws of this State.

Cited: Smith v. Alberta etc. Rec. Co. (1903) 9 Ida. 399; 74 Pac. 1071.

Provision Self-Acting: This provision is self-acting and self-operative in so far as it requires the facts therein enumerated to exist at the time a foreign corporation begins to

transact business within the State, and it requires such corporations to subject themselves to the jurisdiction and laws of this State before they are given recognition or legal existence within its borders. Katz v. Herrick (1906) 12 Ida. 1; 86 Pac. 873.

Constructing Railroad in City or Town.

Sec. 11. No street, or other railroad, shall be constructed within any city, town, or incorporated village without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street or other railroad.

Retroactive Laws Favoring Corporations Prohibited.

Sec. 12. The Legislature shall pass no law for the benefit of a railroad, or other corporation, or any individual or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past.

Telegraph and Telephone Companies.

Sec. 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this State, and connect the same with other lines; and the Legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section.

Consolidation of Corporations with Foreign Corporations.

Sec. 14. If any railroad, telegraph, express or other corporation, organized under any of the laws of this State shall consolidate by sale or otherwise with any railroad, telegraph, express, or other corporation organized under any of the laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise, as if said consolidation had not taken place.

Transfer of Franchises.

Sec. 15. The Legislature shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Term "Corporation" Defined.

Sec. 16. The term "corporation" as used in this article, shall be held and construed to include all associations and joint stock com-

panies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.

Unincorporated Associations: An unincorporated association or joint stock company may be formed by individuals for the purchase of a single tract of real estate, the title to which may be taken in a trustee, and the articles of agreement may provide that the death of a shareholder shall not result in the dissolution of the association, and that either or any

of the officers or shareholders shall not sell or dispose of any property of the association, without the concurrence of the shareholders; such an association is not a corporation under the Constitution or statutes, but is a form of special partnership. *Spotswood v. Morris* (1906) 12 Ida. 360; 85 Pac. 1094.

Liability of Stockholders: Dues.

Sec. 17. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

Combinations in Restraint of Trade Prohibited.

Sec. 18. That no incorporated company, or any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price, or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people; and that the Legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

ARTICLE 12.

CORPORATIONS, MUNICIPAL.

Section

- 1. General laws for cities and towns.
- 2. Local police regulations authorized.

Section

- 3. State not to assume local indebtedness.
- 4. Municipal corporations not to loan credit.

General Laws for Cities and Towns.

Sec. 1. The Legislature shall provide by general laws for the incorporation, organization and classification of the cities and towns, in proportion to the population, which laws may be altered, amended, or repealed by the general laws. Cities and towns heretofore incorporated, may become organized under such general laws, whenever a majority of the electors at a general election, shall so determine, under such provision therefor as may be made by the Legislature.

Cited: *People v. Bancroft* (1892) 3 Ida. 356; 29 Pac. 112; (*Concur. op.*) *Green v. State Board Canvassers* (1896) 5 Ida. 130; 47 Pac. 259; *Brown v. Village of Grangeville*. (1902) 8 Ida. 784; 71 Pac. 151.

General Incorporation Laws: Pow-

er is directly given to the Legislature to enact general laws for the incorporation of cities, towns and villages, and to alter, amend or repeal such laws at any time. *State v. Steunenberg* (1896) 5 Ida. 1; 45 Pac. 462.

Organization of Cities: The latter part of this section of the Constitution points out a means by which towns or villages which had been incorporated prior to the adoption of the Constitution, may become organized into cities under general laws; that is, whenever a majority of the electors, at a general election held for that purpose, so indicate by their votes. *Ib.*

Special Legislation Not Prohibited: This section prohibits the enactment

of local or special laws on the subjects therein enumerated, but leaves the Legislature master of its own discretion in passing special laws on subjects not prohibited by the Constitution. *Butler v. City of Lewiston* (1905) 11 Ida. 393; 83 Pac. 234.

Amendments of Special Charters: The Legislature is not required to submit acts amending special charters of cities to the electors of such cities prior to their going into effect. *Ib.*

Local Police Regulations Authorized.

Sec. 2. Any county or incorporated city or town may make and enforce, within its limits, all such local, police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

Cited: *In re Francis* (1900) 7 Ida. 98; 60 Pac. 561; *In re Snyder* (1905) 10 Ida. 682; 79 Pac. 819.

Municipal Ordinances: This provision authorizes the council of any city to make and enforce ordinances that are not in conflict with the general law, and forbids the making and enforcing of any ordinance in conflict with the general law. *In re Rid-*

enbaugh (1897) 5 Ida. 371; 49 Pac. 12.

Cities have the power to prescribe and enforce police regulations punishing misdemeanors, notwithstanding a general statute prescribing a punishment for the same offense. *State v. Quong* (1891) 8 Ida. 191; 67 Pac. 491.

State Not to Assume Local Indebtedness.

Sec. 3. The State shall never assume the debts of any county, town, or other municipal corporation, unless such debts shall have been created to repel invasion, suppress insurrection or defend the State in war.

Municipal Corporations Not to Loan Credit.

Sec. 4. No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: *Provided*, That cities and towns may contract indebtedness for school, water, sanitary, and illuminating purposes: *Provided*, That any city or town contracting such indebtedness shall own its just proportion of the property thus created, and receive from any income arising therefrom, its proportion to the whole amount so invested.

Cited: *State v. Union etc. Ins. Co.* (1902) 8 Ida. 240; 67 Pac. 647.

ARTICLE 13.

IMMIGRATION AND LABOR.

Section

1. Bureau of Immigration: Commissioner.
2. Protection and hours of labor.
3. Restrictions on convict labor.
4. Child labor in mines prohibited.

Section

5. Aliens not to be employed on public work.
6. Mechanics liens to be provided.
7. Boards of Arbitration.
8. Duties and compensation of Commissioner.

Bureau of Immigration: Commissioner.

Sec. 1. There shall be established a Bureau of Immigration, Labor and Statistics, which shall be under the charge of a Commissioner of Immigration, Labor and Statistics, who shall be appointed by the Governor, by and with the consent of the Senate. The Commissioner shall hold his office for two years, and until his successor shall have been appointed and qualified, unless sooner removed. The Commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor and the earnings of laboring men and women, and the means of promoting their material, social, intellectual and moral prosperity. The Commissioner shall annually make a report in writing to the Governor of the State of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the bureau.

Protection and Hours of Labor.

Sec. 2. Not more than eight (8) hours actual work shall constitute a lawful day's work on all State and municipal works, and the Legislature shall pass laws to provide for the health and safety of employes in factories, smelters, mines and ore reduction works.

House Joint Resolution, approved March 12, 1901, (Laws 1901, 311) ratified Nov. 4th, 1902.

The section prior to amendment read as follows:

Sec. 2. Not more than eight (8) hours actual work shall constitute a lawful day's work on all State and municipal works.

Restrictions on Convict Labor.

Sec. 3. All labor of convicts confined in the State's prison, shall be done within the prison grounds, except where the work is done on public works under the direct control of the State.

Child Labor in Mines Prohibited.

Sec. 4. The employment of children under the age of fourteen (14) years in underground mines is prohibited.

Aliens Not to be Employed on Public Work.

Sec. 5. No person, not a citizen of the United States, or who has not declared his intention to become such, shall be employed upon, or in connection with, any State or municipal works.

Mechanics' Liens to be Provided.

Sec. 6. The Legislature shall provide by proper legislation for giving to mechanics, laborers, and material men an adequate lien on the subject matter of their labor.

Boards of Arbitration.

Sec. 7. The Legislature may establish Boards of Arbitration, whose duty it shall be to hear and determine all differences and controversies between laborers and their employers which may be submitted to them in writing by all the parties. Such Boards of Arbitration shall possess all the powers and authority in respect to administering oaths, subpoenaing witnesses, and compelling their

attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on Justices of the Peace.

Duties and Compensation of Commissioner.

Sec. 8. The Commissioner of Immigration, Labor and Statistics shall perform such duties and receive such compensation as may be prescribed by law.

ARTICLE 14.

MILITIA.

Section

1. Persons subject to military duty.
2. Legislature to provide for enrollment of militia.
3. Selection and commission of officers.

Section

4. Preservation of records, banners and relics.
5. National and State flags only to be carried.
6. Importation of armed forces prohibited.

Persons Subject to Military Duty.

Sec. 1. All able bodied male persons, residents of this State, between the ages of eighteen and forty-five years shall be enrolled in the militia, and perform such military duty as may be required by law; but no person having conscientious scruples against bearing arms, shall be compelled to perform such duty in time of peace. Every person claiming such exemption from service, shall, in lieu thereof, pay into the school fund of the county of which he may be a resident, an equivalent in money, the amount and manner of payment to be fixed by law.

Legislature to Provide for Enrollment of Militia.

Sec. 2. The Legislature shall provide by law for the enrollment, equipment and discipline of the militia, to conform as nearly as practicable to the regulations for the government of the armies of the United States, and pass such laws to promote volunteer organizations as may afford them effectual encouragement.

Selection and Commission of Officers.

Sec. 3. All militia officers shall be commissioned by the Governor, the manner of their selection to be provided by law, and may hold their commissions for such period of time as the Legislature may provide.

Preservation of Records, Banners and Relics.

Sec. 4. All military records, banners and relics of the State, except when in lawful use, shall be preserved in the office of the Adjutant General as an enduring memorial of patriotism and valor of the soldiers of Idaho; and it shall be the duty of the Legislature to provide by law for the safekeeping of the same.

National and State Flags Only to be Carried.

Sec. 5. All military organizations under the laws of this State

shall carry no other device, banner or flag than that of the United States or the State of Idaho.

Importation of Armed Forces Prohibited.

Sec. 6. No armed police force, or detective agency, or armed body of men, shall ever be brought into this State for the suppression of domestic violence, except upon the application of the Legislature, or the Executive when the Legislature cannot be convened.

ARTICLE 15.

WATER RIGHTS.

Section

1. Use of waters a public use.
2. Right to collect rates a franchise.
3. Appropriation of water: Priorities.

Section

4. Continuing rights to water guaranteed.
5. Priorities and limitations on use.
6. Establishment of maximum rates.

Use of Waters a Public Use.

Sec. 1. The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner prescribed by law.

Cited: Wilterding v. Green (1896) 4 Ida. 773; 45 Pac. 134; Boise Irr. etc. Co. v. Stewart (1904) 10 Idaho, 38; 77 Pac. 25, 321; Hill v. Standard Min. Co. (1906) 12 Ida. 223; 85 Pac. 907.

Right to Use Water: The individuals comprising the public, who are in

condition to use water, have a constitutional right to use water under such reasonable rules and regulations, and upon such payments, as may be prescribed. Wilterding v. Green (1896) 4 Ida. 773; 45 Pac. 134.

Right to Collect Rates a Franchise.

Sec. 2. The right to collect rates or compensation for the use of water supplied to any county, city, or town, or water district, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

Cited: Wilterding v. Green (1896) 4 Ida. 773; 45 Pac. 134.

Requirement of Free Water: This section simply defines the right to collect rates for a water supply as a franchise, and does not prohibit the

Legislature from passing a law compelling a water company to furnish a city with free water for fire purposes. Boise City v. Artes. H. & C. W. Co. (1895) 4 Ida. 351; 39 Pac. 562

Appropriation of Water: Priorities.

Sec. 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such

limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district, those using the water, for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article 1, of this Constitution.

Cited: *Hard v Boise City Irr. etc. Co.* (1904) 9 Ida. 589; 76 Pac. 331.

Preferential Rights to Water: The framers of the Constitution, in adopting this section, realized that in some sections of the State agriculture would predominate, and that the use of water for such purposes should have a preference right in such sections, while in other sections mining would be the principal industry and would be entitled to a preference right. Hill

v. Standard Min. Co. (1906) 12 Ida. 223; 85 Pac. 907.

Pollution of Streams: This section does not authorize or permit parties engaged in mining or other occupations to fill up the natural channel of any of the streams of the State, or to pollute the same with debris and poisonous substances to the injury of any other user of the waters of the streams. Ib.

Continuing Rights to Water Guaranteed.

Sec. 4. Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.

Cited: *Wilterding v. Green* (1896) 4 Ida. 773; 45 Pac. 134.

Payment of Compensation: While this section secures to every one who has rented water the right to rent the same from year to year, yet his right to water for any given year depends upon his compliance with statutory enactments regulating the payment of compensation or tender of security therefor, and no action to confirm his right to such water accrues in his favor until he has paid, or ten-

dered security for, such compensation. *Bardsly v. Boise Irr. etc. Co.* (1901) 8 Ida. 155; 67 Pac. 428.

Change of Use: This section does not require water to be used on the land where it is first taken, nor prohibit the change of the place of use, nor deny to the user a property right in the water which he takes from a canal. (*Sullivan, C. J., dissents.*) *Hard v. Boise City Irr. etc. Co.* (1904) 9 Ida. 589; 76 Pac. 331.

Priorities and Limitations on Use.

Sec. 5. Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons priority in time shall give superiority of right to the use of such

water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the Legislature, having due regard both to such priority of right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

Cited: *Wilterding v. Green* (1896) 4 Ida. 773; 45 Pac. 134; *Hard v.*

Boise City Irr. etc. Co. (1904) 9 Ida. 589; 76 Pac. 331.

Establishment of Maximum Rates.

Sec. 6. The Legislature shall provide by law the manner in which reasonable maximum rates may be established to be charged for the use of water sold, rented or distributed for any useful or beneficial purpose.

Cited: *Wilterding v. Green* (1896) 4 Ida. 773; 45 Pac. 134.

Requirement of Free Water: The provisions of Revised Statutes, Sec. 2711, requiring water companies to furnish cities with free water for fire purposes, is not repugnant to this section. *Boise City v. Artes. H. & C. W. Co.* (1895) 4 Ida. 351; 39 Pac. 562

Fixing Rates: This section authorizes the Legislature to provide the manner in which water rates may be established, and by necessary implication prohibits the Legislature from

fixing such rates as they attempted to do by Laws 1897, 52. *Wilson v. Per-rault* (1898) 6 Ida. 178; 54 Pac. 617.

This section imposes on the Legislature the duty of providing the method or means by which compensation for supplying water to any city or town are to be fixed, and until the Legislature provides such a method, the contract rates for such supply will be enforced. *Jack v. Village of Grangeville* (1903) 9 Ida. 291; 74 Pac. 969.

ARTICLE 16.

LIVE STOCK.

Section

1. Laws to protect live stock.

Laws to Protect Live Stock.

Sec. 1. The Legislature may pass all necessary laws to provide for the protection of live stock against the introduction or spread of pleuro-pneumonia, glanders, splenetic or Texas fever, and other infectious or contagious diseases. The Legislature may also establish a system of quarantine or inspection, and such other regulations as may be necessary for the protection of stock owners and most conducive to the stock interests within the State.

Cited: *Noble v. Bragaw* (1906) 12 Ida. 265; 85 Pac. 903.

ARTICLE 17.

STATE BOUNDARIES.

Section

1. Name and boundaries of State.

Name and Boundaries of State.

Sec. 1. The name of this State is Idaho, and its boundaries are as follows: Beginning at a point in the middle channel of Snake River

where the northern boundary of Oregon intersects the same; then follow down the channel of the Snake River to a point opposite the mouth of the Kooskooskia or Clearwater River; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root Mountains; thence southward along the crest of the Bitter Root Mountains till its intersection with the Rocky Mountains; thence southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel to the eastern boundary of the State of Oregon; thence north along that boundary to the place of beginning.

ARTICLE 18.

COUNTY ORGANIZATION.

Section

1. Existing counties recognized.
2. Removal of county seats.
3. Division of counties.
4. New counties: Size and valuation.
5. System of county government.

Section

6. County officers.
7. Same: Salaries.
8. Same: How paid.
9. Same: Liability for fees.
10. Board of county commissioners.
11. Duties of officers.

Existing Counties Recognized.

Sec. 1. The several counties of the Territory of Idaho as they now exist, are hereby recognized as legal subdivisions of this State.

Cited: People ex rel Lincoln Co. v. George (1891) 3 Ida. 72; 26 Pac. 983; People v. Alturas Co. (1899) 6 Ida. 418; 55 Pac. 1067; Roach v. Gooding (1905) 11 Ida. 244; 81 Pac. 642.

Abolition of Counties: The Legislature cannot abolish an existing county. (Concur. op.; Sullivan, C. J., dissents.) People v. George (1891)

3 Ida. 72; 26 Pac. 983. The Legislature can not abolish an existing county and create two new counties from the territory formerly embraced within the old county with different county seats and new sets of officers. Stockslager, C. J., dissents.) McDonald v. Doust (1905) 11 Ida. 14; 81 Pac. 60.

Removal of County Seats.

Sec. 2. No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six years, except as provided by existing laws. No person shall vote at any county seat election who has not resided in the county six months, and in the precinct ninety days.

Cited: (Concur. op.) People v. George (1891) 3 Ida. 72; 26 Pac. 983; (Concur. op.) Green v. State Board Canvassers (1896) 5 Ida. 130; 47 Pac. 259; McDonald v. Doust (1905) 11 Ida. 14; 81 Pac. 60.

Application: The limitations imposed by this section on the removal of a county seat, apply only to the removal of a county seat which has been permanently fixed, and do not prohibit the Legislature from tem-

porarily locating the seat of a new county, and further providing, in the act creating the county, for an election on the question of permanent location of the county seat. *Doan v. Board of Commrs.* (1891) 3 Ida. 38; 26 Pac. 167.

Signers of Petition: The framers of the Constitution did not intend to prescribe a rule by which a majority of the qualified electors, contemplated by this section as signers of a pe-

tition for the removal of a county seat, should be ascertained, but left that rule to be established by the Legislature, as was done in Laws 1899, 41, Sec. 6, providing for county seat elections, and by which the qualified electors who sign the petition need not be registered voters. (*Quarles, J.*, dissents). *Wilson v. Bartlett* (1900) 7 Ida. 271; 62 Pac. 416.

Division of Counties.

Sec. 3. No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division: *Provided*, That this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed. When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Cited: (Concur. op.) *People v. George* (1891) 3 Ida. 72; 26 Pac. 983; *Sabin v. Curtis*, 1893) 3 Ida. 662; 32 Pac. 1130; *McDonald v. Doust* (1905) 11 Ida. 14; 81 Pac. 60.

Division of Territory: This section prohibits cutting off territory from one county and annexing it to another without submitting the proposition to popular vote, under the guise of an act purporting to create two new counties from the territory previously belonging to two existing counties, and so changing the boundary line between them as to give one of the counties a strip of territory which previously belonged to the other. The Act of March 3, 1891, purporting to create and organize the counties of Alta and Lincoln was held on this ground to be unconstitutional. (*Sullivan, C. J.*, dissents.) *People ex rel. Lincoln Co. v. George* (1891) 3 Ida. 72; 26 Pac. 983.

Creation of New Counties: This

section and the following one expressly authorize the creation of new counties, and in the creation of such a county, the Legislature may make any provision necessary to the complete organization of that county not specifically prohibited by the Constitution, and may provide for the apportionment of the debt of the original county and for transcribing the records. *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277.

Liability of Detached Territory: This section continues the liability of territory, detached from one county and annexed to another, for its ratable proportion of the debts of the mother county, and prohibits the Legislature from imposing such indebtedness on the county to which the detached territory is annexed. (*Sullivan, J.*, dissents.) *Shoshone Co. v. Proffitt* (1906) 11 Ida. 763; 84 Pac. 712.

New Counties: Size and Valuation.

Sec. 4. No new counties shall be established which shall reduce any county to an area of less than four hundred square miles nor the valuation of its taxable property to less than one million dollars. Nor shall any new county be formed which shall have an area of less than four hundred square miles and taxable property of less than one million dollars, as shown by the last previous assessment.

House Joint Resolution, approved March 12, 1897 (Laws 1897, 183) ratified Nov. 8, 1898.

The section prior to amendment read as follows:

Sec. 4. No new county shall be es-

tablished which shall reduce any county to an area of less than four hundred square miles; nor shall a new county be formed containing an area of less than four hundred square miles.

Cited: (Concur. op.) *People v. George* (1891) 3 Ida. 72; 26 Pac. 983; *Sabin v. Curtis* (1893) 3 Ida. 662; 32 Pac. 1130; *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277.

Constitutionality of Amendment: Quære suggested as to the constitutionality of the amendment of 1898. *Holmberg v. Jones* (1901) 7 Ida. 752; 65 Pac. 563.

Creation of New County: A county cannot be created by implication and intendment merely, and an act appar-

ently passed for the purpose of creating a county, is invalid for that purpose when it fails to declare in express language the creation of such proposed county. *Homer v. Jones* (1901) 7 Ida. 752; 65 Pac. 563.

The authority granted by this section to create new counties does not authorize the reorganization of an old county under a new name. *McDonald v. Doust* (1905) 11 Ida. 14; 81 Pac. 60.

System of County Government.

Sec. 5. The Legislature shall establish, subject to the provisions of this article, a system of county governments which shall be uniform throughout the State; and by general laws shall provide for township or precinct organization.

Cited: *McDonald v. Doust* (1905) 11 Ida. 14; 81 Pac. 60.

County Officers.

Sec. 6. The Legislature by general and uniform laws shall provide for the election biennially in each of the several counties of the State, of county commissioners, a sheriff, a county treasurer, who is ex-officio public administrator, a probate judge, a county superintendent of public instruction, a county assessor, who is ex-officio tax collector, a coroner and a surveyor. The clerk of the District Court shall be ex-officio auditor and recorder. No other county offices shall be established, but the Legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The Legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal monies which may be paid to them or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder, and clerk of the District Court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected. The salary and qualifications of the county superintendent shall be fixed by law.

House Joint Resolution, approved March 9, 1895 (Laws 1895, 237) ratified Nov. 3, 1896. This is a second amendment, the original section having been previously amended in 1894. (See Laws 1893, 224, for resolution of submission.)

The section originally read as follows:

Sec. 6. The Legislature, by general and uniform laws, shall provide

for the election biennially in each of the several counties of the State, of county commissioners, a sheriff, county treasurer, who is ex officio public administrator; probate judge who is ex officio county superintendent of public instruction; county assessor, who is ex officio tax collector; a coroner and a surveyor. The Clerk of the District Court shall be ex officio auditor and recorder. No other coun-

ty offices shall be established, but the Legislature by general and uniform laws shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The Legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder and Clerk of the District Court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies and clerical assistance to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected.

Cited: Hillard v. Shoshone Co. (1891) 3 Ida. 103; 27 Pac. 678; Cunningham v. George (1892) 3 Ida. 456; 31 Pac. 809; Sabin v. Curtis (1893) 3 Ida. 662; 32 Pac. 1130; Campbell v. Commrs. Logan Co. (1894) 4 Ida. 181; 37 Pac. 329; Ada Co. v. Gess (1895) 4 Ida. 611; 43 Pac. 71; State ex rel. Griffith v. Vineyard (1903) 9 Ida. 134; 72 Pac. 824; In re Sly (1904) 9 Ida. 779; 76 Pac. 766; Feltham v. Board Commrs. (1904) 10 Ida. 182; 77 Pac. 332; In re Rice (1906) 12 Ida. 305; 85 Pac. 1109.

Effect of Amendment: A constitutional amendment separating two offices theretofore combined, which provides that "the Legislature by general and uniform laws" shall provide for the "election biennially" of such officers, is not self-executing, and does not go into full operation until such laws have been enacted, and a general biennial election has been held thereunder. Blake v. Board Commrs. (1897) 5 Ida. 163; 47 Pac. 734.

Employment of Counsel: The board of county commissioners has no authority to employ an attorney to act by the year as legal adviser for the county. Meller v. Board etc. Logan Co. (1894) 4 Ida. 44; 35 Pac. 712; Hampton v. Commrs. Logan Co. (1896) 4 Ida. 646; 43 Pac. 324. The necessity for such employment must be apparent and the facts creating such necessity must be made a matter of record by the commissioners. Hampton v. Commrs. Logan Co. (1896) 4 Ida. 646; 43 Pac. 324. And they must act as a board. Conger v. Board Commrs. Latah Co. (1896) 4 Ida. 740; 48 Pac. 1064.

Where it is shown by the record

of the county commissioners that the existence of a county is involved, and that the constitutionality of an act creating a new county is to be litigated, the county commissioners are justified in employing counsel. Ravenscraft v. Board Commrs. (1897) 5 Ida. 178; 47 Pac. 942.

County commissioners may employ counsel only in matters over which they have jurisdiction and control; they cannot control or interfere with criminal prosecutions or employ counsel to assist the District Attorney in the conduct thereof. (Huston, J., dissents.) Conger v. Commrs. Latah Co. (1897) 5 Ida. 347; 48 Pac. 1064.

Appointment of Deputies: The question of the appointment of deputies is submitted entirely to the discretion of the county commissioners and the sheriff cannot appoint a deputy to assist him unless he is empowered so to do by the commissioners. Campbell v. Board Commrs. (1896) 5 Ida. 53; 46 Pac. 1022.

Where an officer is absent from his office by reason of illness or private business, the expense of employing a deputy to transact the business of the office is not a county charge. Woodward v. Board Commrs. Ida. Co. (1897) 5 Ida. 524; 51 Pac. 143.

Before the county commissioners are authorized to empower the sheriff to appoint a deputy, they must find that the business of the office requires the assistance of a deputy so that a necessity exists for such appointment. (Huston, C. J., dissents.) Taylor v. Canyon Co. (1899) 6 Ida. 466; 56 Pac. 168.

No other county officers than those mentioned in this section are entitled to deputies or clerks at the expense of the county. Fremont Co. v. Brandon (1899) 6 Ida. 482; 56 Pac. 264.

The authorization of an appointment of a deputy clerk and recorder by the county commissioners is not an infraction of the provisions of this section which prohibits the establishment of county officers other than those therein enumerated. Dunbar v. Canyon Co. (1899) 6 Ida. 725; 59 Pac. 536.

Salaries of deputies duly and regularly employed pursuant to authority conferred by the board of commissioners, are a county charge, but the salaries of deputies not so authorized, are not a county charge. Taylor v. Canyon Co. (1900) 7 Ida. 171; 61 Pac. 521.

Repeal: This provision was not intended to repeal Sec. 1815 of the Revised Statutes, and the Act amendatory thereof, any further than to relieve the county from the payment of all deputies' salaries except those appointed by the sheriff, auditor, recorder and clerk, when duly empowered by the board of county commissioners, and the salaries of such deputies duly fixed. *Ib.*

Same: Salaries.

Sec. 7. All county officers and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid quarterly out of the county treasury, as other expenses are paid. All actual and necessary expenses, incurred by any county officer or deputy, in the performance of his official duties, shall be a legal charge against the county, and may be retained by him out of any fees, which may come into his hands. All fees, which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treasury at the end of each quarter. He shall at the end of each quarter file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts.

House Joint Resolution passed March 8, 1897 (Laws 1897, 185) ratified Nov. 8, 1898.

The section prior to amendment read as follows:

Sec. 7. The officers provided by section six (6) of this article shall receive annually as compensation for their services as follows: Sheriff, not more than four thousand dollars and not less than one thousand dollars, together with such mileage as may be prescribed by law; Clerk of the District Court, who is ex officio auditor and recorder, not more than three thousand dollars, and not less than five hundred dollars; probate judge, who is ex officio county superintendent of public instruction, not more than two thousand dollars, and not less than five hundred dollars; county assessor, who is ex officio tax collector, not more than three thousand dollars and not less than five hundred dollars; county treasurer, who is ex officio public administrator, not more than one thousand dollars, and not less than three hundred dollars; coroner, not more than five hundred dollars; county surveyor, not more than one thousand dollars; county commissioners, such per diem and mileage as may be prescribed by law; and justices of the peace and constables such fees as may be prescribed by law.

Cited: *Cunningham v. Moody* (1891) 3 Ida. 125; 35 Am. St. Rep. 269; 28 Pac. 395; *Eakin v. Nez Perce Co.* (1894) 4 Ida. 131; 36 Pac. 702; *Campbell v. Commrs. Logan Co.* (1894) 4 Ida. 181; 37 Pac. 329; *Naylor v. Vermont Loan etc. Co.* (1898) 6 Ida. 251; 55 Pac. 297; *Taylor v. Canyon Co.* (1900) 7 Ida. 171; 61 Pac. 521.

Compensation to Officers: A county officer who receives greater compensation for his services than is allowed by this section, is liable to the county for the excess, and may be sued by the county therefor, although

the commissioners allowed his claim for the amount so received. *Ada Co. v. Gess* (1905) 4 Ida. 611; 43 Pac. 71.

This action as amended abrogates Laws 1891, 177, as to sheriff's mileage in criminal cases and they are entitled to no mileage therein. *Ellis v. Bingham Co.* (1900) 7 Ida. 86; 60 Pac. 79.

This section as amended abrogates ture to empower the county commissioners of the various counties of the State to fix the salaries of county officers of their respective counties, except in the matter of fixing their own salaries. The salary Act of March 7, 1899, is conformable to the provisions of this section except in so far as it authorizes the commissioners to fix their own salaries. *Stookey v. Board Commrs.* (1899) 6 Ida. 542; 57 Pac. 312.

Fees received by the county treasurer in acting as ex-officio public administrator, must be accounted for and reported to the county and cannot be retained by the officer for his personal or individual use. *In re Rice* (1906) 12 Ida. 305; 85 Pac. 1109.

Fees received by the clerk of the court in taking proof made upon government lands, and legal fees received by the probate judge in solemnizing marriages, must be paid into the county treasury. *Rhea v. Board Co. Commrs.* (1906) 12 Ida. 455; 88 Pac. 89.

Decisions Prior to Amendment: The clerk of the District Court, as such, and as auditor and recorder, cannot receive as compensation for his own use, for the performance of his duties in all these capacities, any sum in excess of \$3,000 for any one year. *Hillard v. Shoshone Co.* (1891) 3 Ida. 103; 27 Pac. 678.

The maximum compensation to be paid to the assessor and tax collector is limited by this section to \$3,000 and he can in no event receive a larger sum. *Guheen v. Curtis* (1892) 3 Ida. 443; 31 Pac. 805.

Where the probate judge acts as his own clerk, his compensation as judge, clerk and county superintendent cannot exceed more than \$2,000 for all his services in that capacity; where he appoints a clerk, he and his clerk together cannot receive more than \$2,000. *Co. of Ada v. Ryals* (1895) 4 Ida. 365; 39 Pac. 556.

The object of this section was to make county offices self-sustaining and to limit the cost of maintenance to the fees provided by law, except when such fees do not amount to the minimum salary fixed by law. *Woodward v. Board Commrs. Idaho Co.* (1897) 5 Ida. 524; 51 Pac. 143.

Same: How Paid.

Sec. 8. The compensation provided in section seven (7) for the officers therein mentioned shall be paid by fees or commissions, or both, as prescribed by law. All fees and commissions received by such officers in excess of the maximum compensation per annum provided for each in section seven (7) of this article shall be paid to the county treasurer for the use and benefit of the county. In case the fees received in any one year by any one such officer shall not amount to the minimum compensation per annum therein provided, he shall be paid by the county a sum sufficient to make his aggregate annual compensation equal to such minimum compensation.

Cited: *Hillard v. Shoshone Co.* (1891) 3 Ida. 103; 27 Pac. 678; *Eakin v. Nez Perce Co.* (1894) 4 Ida. 131; 36 Pac. 702; *Campbell v. Commrs. Logan Co.* (1894) 4 Ida. 181; 37 Pac. 329; *Co. of Ada v. Ryals* (1895) 4 Ida. 365; 39 Pac. 556; *Taylor v. Canyon Co.* (1900) 7 Ida. 171; 61 Pac. 521.

Payment of Officers: Rev. St. Sec. 2120, providing for the payment of compensation of county officers out of the county treasury upon warrants, is in some degree repugnant to this section. *Naylor v. Vermont Loan etc. Co.* (1898) 6 Ida. 251; 55 Pac. 297.

Accountability for Fees: The fees "received" by an officer for which he must account to the county, include fees earned though not collected by the officer. *Ib.*

Salaries of Officers: Where the compensation of assessor is by statute to be paid by commissions and fees, the county commissioners exceed their power in allowing an assessor a quarterly salary, and an order made by them allowing such salary is void, and may be attacked directly or collaterally. *Fremont Co. v. Brandon* (1899) 6 Ida. 482; 56 Pac. 264.

Same: Liability for Fees.

Sec. 9. The neglect or refusal of any county officer or deputy to account for and pay into the county treasury any money received as fees or compensation, in excess of his actual and necessary expenses, incurred in the performance of his official duties, within ten days after his quarterly settlement with the county, shall be a felony, and the grade of the crime shall be embezzlement of public funds, and be punishable as provided for such offenses.

House Joint Resolution, passed March 8, 1897 (Laws 1897, 185) ratified Nov. 8, 1898.

The section prior to amendment read as follows:

Sec. 9. The neglect or refusal of any officer named in this article to account for any pay into the county treasury any money received as fees or compensation in excess of the maximum amount allowed to such officer by the provisions of this article, within forty days after the receipt of the same, shall be a felony, and the grade

of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense.

Cited: *Eakin v. Nez Perce Co.* (1894) 4 Ida. 131; 36 Pac. 702; *In re Rice* (1906) 12 Ida. 305; 85 Pac. 1109.

Application: This provision applies only to the liability of a derelict officer criminally, and has nothing whatever to do with the civil liability of the officer or his sureties. *Co. of Ada v. Ellis* (1897) 5 Ida. 333; 48 Pac. 1071.

Board of County Commissioners.

Sec. 10. The board of county commissioners shall consist of three members, whose term of office shall be two years.

Duties of Officers.

Sec. 11. County, township and precinct officers shall perform such duties as shall be prescribed by law.

Cited: Conger v. Commrs. Latah Co. (1897) 5 Ida. 347; 48 Pac. 1064; State ex rel Griffith v. Vineyard

(1903) 9 Ida. 134; 72 Pac. 824; In re Sly (1904) 9 Ida. 779; 76 Pac. 766.

ARTICLE 19.**APPORTIONMENT.****Section****1. Senatorial districts.****Section****2. Representative districts.****Senatorial Districts.**

Sec. 1. Until otherwise provided by law the apportionment of the two Houses of the Legislature shall be as follows:

The first Senatorial District shall consist of the county of Shoshone, and shall elect two Senators.

The second shall consist of the counties of Kootenai and Latah, and shall elect one Senator.

The third shall consist of the counties of Nez Perce and Idaho, and shall elect one Senator.

The fourth shall consist of the counties of Nez Perce and Latah and shall elect one Senator.

The fifth shall consist of the county of Latah and shall elect one Senator.

The sixth shall consist of the county of Boise, and shall elect one Senator.

The seventh shall consist of the county of Custer, and shall elect one Senator.

The eighth shall consist of the county of Lemhi, and shall elect one Senator.

The ninth shall consist of the county of Logan, and shall elect one Senator.

The tenth shall consist of the county of Bingham, and shall elect one Senator.

The eleventh shall consist of the counties of Bear Lake, Oneida and Bingham, and shall elect one Senator.

The twelfth shall consist of the counties of Owyhee and Cassia, and shall elect one Senator.

The thirteenth shall consist of the county of Elmore, and shall elect one Senator.

The fourteenth shall consist of the county of Alturas, and shall elect one Senator.

The fifteenth shall consist of the county of Ada, and shall elect two Senators.

The sixteenth shall consist of the county of Washington, and shall elect one Senator.

Cited: Sabin v. Curtis (1893) 3
Ida. 662; 32 Pac. 1130.

Representative Districts.

Sec. 2. The several counties shall elect the following members of the House of Representatives:

- The county of Ada, three members.
- The counties of Ada and Elmore, one member.
- The county of Alturas, two members.
- The county of Boise, two members.
- The county of Bear Lake, one member.
- The county of Bingham, three members.
- The county of Cassia, one member.
- The county of Custer, two members.
- The county of Elmore, one member.
- The county of Idaho, one member.
- The counties of Idaho and Nez Perce, one member.
- The county of Kootenai, one member.
- The county of Latah, two members.
- The counties of Kootenai and Latah, one member.
- The county of Logan, two members.
- The county of Lemhi, two members.
- The county of Nez Perce, one member.
- The county of Oneida, one member.
- The county of Owyhee, one member.
- The county of Shoshone, four members.
- The county of Washington, two members.
- The counties of Bingham, Logan and Alturas, one member.

ARTICLE 20.

AMENDMENTS.

Section

1. How amendments may be proposed.
2. Submission of several amendments.

Section

3. Revision or amendment by convention.
4. Submission of revised Constitution to people.

How Amendments May Be Proposed.

Sec. 1. Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the State at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election, in not less than one newspaper of general circulation published in each county; and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Cited: Holmberg v. Jones (1901) 7 Ida. 752; 65 Pac. 563.

Proposal of Amendments: An amendment to the Constitution may be proposed by joint resolution and need not be presented to the people by a formal statute. Hays v. Hays (1897) 5 Ida. 154; 47 Pac. 732.

Adoption of Amendments: Where

a majority of electors voting upon the question of amendment of the Constitution vote in favor of the amendment, the amendment is ratified, although the votes thus cast are not a majority of the votes cast at the general election for State officers. Green v. St. Board Canvassers (1896) 5 Ida. 130; 47 Pac. 259.

Submission of Several Amendments.

Sec. 2. If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

Cited: Green v. State Board Canvassers (1896) 5 Ida. 130; 47 Pac. 259.

Revision or Amendment by Convention.

Sec. 3. Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the Legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members not less than double the number of the most numerous branch of the Legislature.

Cited: Green v. State Board Canvassers (1896) 5 Ida. 130; 47 Pac.

259; Holmberg v. Jones (1901) 7 Ida. 752; 65 Pac. 563.

Submission of Revised Constitution to People.

Sec. 4. Any Constitution adopted by such convention, shall have no validity until it has been submitted to, and adopted by, the people.

Cited: Green v. State Board Canvassers (1896) 5 Ida. 130; 47 Pac.

259; Holmberg v. Jones (1901) 7 Ida. 752; 65 Pac. 563.

ARTICLE 21.

SCHEDULE AND ORDINANCE.

Section

1. Judicial proceedings continued.
2. Laws continued in force.
3. Territorial fines and forfeitures accrue to State.
4. Territorial bonds and obligations pass to State.
5. Territorial officers to continue in office.
6. Submission of Constitution to electors.
7. When Constitution takes effect.
8. Election proclamation to be issued.
9. Election to be ordered: Conduct of election.
10. Canvass of election returns.

Section

11. Certificates of election.
12. Qualification of officers.
13. Tenure of office.
14. Convention of first Legislature.
15. Legislature to pass necessary laws.
16. Transfer of cases to State courts.
17. Seals of courts.
18. Transfer of probate matters.
19. Religious freedom guaranteed: Disclaimer of title to Indian lands.
20. Adoption of Federal Constitution. Signatures.

Judicial Proceedings Continued.

Sec. 1. That no inconvenience may arise from a change of the Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, claims, liabilities, and obligations against the Territory of Idaho, of whatsoever nature, and rights of individuals, and of bodies corporate, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this Constitution, be issued under the authority of the Territory of Idaho, shall be as valid as if issued in the name of the State.

Laws Continued in Force.

Sec. 2. All laws now in force in the Territory of Idaho which are not repugnant to this Constitution shall remain in force until they expire by their own limitation or be altered or repealed by the Legislature.

Cited: Gilbert v. Moody (1891) 3 Ida. 3; 25 Pac. 1092; Quayle v. Glenn (1899) 6 Ida. 549; 57 Pac. 308.

Construction: "The words "limitation," "altered" and "repealed" as used in this section apply to all laws, special as well as general, in force at

the date of the adoption of the Constitution, and not repugnant to any of its provisions. The word "altered" means "to make different without destroying identity; to vary without change." Butler v. City of Lewiston (1905) 11 Ida. 393; 83 Pac. 234.

Territorial Fines and Forfeitures Accrue to State.

Sec. 3. All fines, penalties, forfeitures, and escheats accruing to the Territory of Idaho shall accrue to the use of the State.

Territorial Bonds and Obligations Pass to State.

Sec. 4. All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain valid, and shall pass over to and may be prosecuted in the name of the State; and all bonds, obligations or other undertakings executed by this Territory, or to any other officer in his official capacity, shall pass over to the proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be used for and recovered accordingly. All criminal prosecutions and penal actions which have arisen, or which may arise before the organization of the judicial department under this Constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the State.

Territorial Officers to Continue in Office.

Sec. 5. All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of this Territory, shall continue to hold and exercise their respective offices and appointments until suspended under this Constitution.

Submission of Constitution to Electors.

Sec. 6. This Constitution shall be submitted for adoption or rejection, to a vote of the electors qualified by the laws of this Territory to vote at all elections at an election to be held on the Tuesday next

after the first Monday in November, A. D., 1899. Said election shall be conducted in all respects in the same manner as provided by the laws of the Territory for general election, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections and abstracts of such returns duly certified shall be transmitted to the Board of Canvassers now provided by law for canvassing the return of votes for Delegate to Congress. The said Canvassing Board shall canvass the votes so returned and certify and declare the result of said election in the same manner, as is required by law for the election of said Delegate.

At the said election the ballots shall be in the following form:
For the Constitution—yes; no.

And as a heading of each of said ballots shall be printed on each ballot, the following instructions to voters:

All persons who desire to vote for the Constitution, or any of the articles submitted to a separate vote, may erase the word "no."

All persons who desire to vote against the Constitution, or against any article submitted separately may erase the word "yes."

Any person may have printed or written on his ballot only the words, "For the Constitution," or "Against the Constitution," and such ballots shall be counted for or against the Constitution accordingly.

When Constitution Takes Effect.

Sec. 7. This Constitution shall take effect and be in full force immediately upon the admission of the Territory as a State.

Election Proclamation to be Issued.

Sec. 8. Immediately upon the admission of the Territory as a State, the Governor of the Territory, or in case of his absence or failure to act, the Secretary of the Territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation, which shall be published, and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election of the people of all State, district, county, township, and other officers, creative and made elective by this Constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation, nor more than ninety days after the admission of the Territory as a State.

Cited: Doan v. Board of Commrs.
Logan Co. (1891) 3 Ida. 38; 26 Pac.
157.

Election to be Ordered: Conduct of Election.

Sec. 9. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given, in the manner and for the length of time provided by the laws of the Territory in cases of general elections for delegate to Congress and county and other officers. Every qualified elector of the Territory, at the date of said election, shall be entitled to a vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the Territory for general elections,

and returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general election; but returns for all State and district officers and members of the Legislature, shall be made to the Canvassing Board hereinafter provided for.

Canvass of Election Returns.

Sec. 10. The Governor, Secretary, Controller, and Attorney General of the Territory, and the president of this convention, or a majority of them, shall constitute a Board of Canvassers to canvass the vote at such elections for all State and district officers and members of the Legislature. The said board shall assemble at the seat of government of the Territory, on the thirtieth day after the date of such election (or on the following day if such day fall on Sunday), and proceed to canvass the vote for all State and District officers and members of the legislature, in the manner provided by the laws of the Territory for canvassing the vote for Delegate to Congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the Secretary of the Territory an abstract certified by them, of the number of votes cast for each person for each of said offices and of the total number of votes cast in each county.

Certificates of Election.

Sec. 11. The Canvassing Boards of the several counties shall issue certificates of election to the several persons found by them to have been elected to the several county and precinct offices.

Qualification of Officers.

Sec. 12. All officers elected at such election shall, within thirty days after they have been declared elected, take the oath required by this Constitution and give the same bond required by the law of the Territory to be given in case of like officers of the Territory district or county, and shall thereupon enter upon the duties of their respective offices; but the Legislature may require by law all such officers to give other or further bonds as a condition of their continuance in office.

Tenure of Office.

Sec. 13. All officers elected at said election, shall hold their offices until the Legislature shall provide by law, in accordance with this Constitution, for the election of their successors and until such successors shall be elected and qualified.

Convention of First Legislature.

Sec. 14. The Governor-elect of the State, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the Legislature of the State at the seat of government on a day to be named in said proclamation and which shall not be less than thirty nor more than sixty days after the date of such proclamation. Within ten days after the organization of the Legislature both houses of the Legislature shall then and there proceed to elect, as provided by law, two Senators of the United States

for the State of Idaho. At said election the two persons who shall receive the majority of all the votes cast by said Senators and Representatives, shall be elected as such United States Senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the Senate and House, shall issue a certificate to each of said Senators, certifying his election, which certificates shall also be signed by the Governor and attested by the Secretary of State.

Cited: Goodnight v Moody (1891)
3 Ida. 7; 26 Pac. 121.

Legislature to Pass Necessary Laws.

Sec. 15. The Legislature shall pass all necessary laws to carry into effect the provisions of this Constitution.

Transfer of Cases to State Courts.

Sec. 16. Whenever any two of the Judges of the Supreme Court of the State, elected under the provisions of this Constitution, shall have qualified in their offices, the causes then pending in the Supreme Court of the Territory, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the Supreme Court of the State and until so superseded the Supreme Court of the Territory and the Judges thereof shall continue, with like powers and jurisdiction, as if this Constitution had not been adopted. Whenever the Judge of the District Court of any district elected under the provisions of this Constitution, shall have qualified in office, the several causes then pending in the District Court of the Territory, within any county in such district, and the records, papers, and proceedings of said District Court, and the seal and other property pertaining thereto shall pass into the jurisdiction and possession of the District Court of the State for such county; and until the District Courts of this Territory shall be superseded in the manner aforesaid the said District Courts and the Judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively, as heretofore constituted under the laws of the Territory.

Seals of Courts.

Sec. 17. Until otherwise provided by law, the seals now in use in the Supreme and District Courts of this Territory are hereby declared to be the seals of the Supreme and District Courts, respectively, of the State.

Transfer of Probate Matters.

Sec. 18. Whenever this Constitution shall go into effect, the books, records, and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the probate court of the same county of the State, and the said probate court shall proceed to the final decree and judgment, order, or other determination in the said several matters and causes as the

said probate court might have done if this Constitution had not been adopted.

Religious Freedom Guaranteed: Disclaimer of Title to Indian Lands.

Sec. 19. It is ordained by the State of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship. And the people of the State of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits, owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States, residing without the said State of Idaho, shall never be taxed at a higher rate than the lands belonging to the residents thereof. That no taxes shall be imposed by the State on the lands or property therein belonging to, or which may hereafter be purchased by, the United States, or reserved for its use. And the debts and liabilities of this Territory shall be assumed and paid by the State of Idaho. That this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Idaho.

Adoption of Federal Constitution.

Sec. 20. That in behalf of the people of Idaho, we in convention assembled, do adopt the Constitution of the United States.

Effect: This section does not impose upon the State all the provisions of the Federal Constitution. Rankin

v. Jauman (1894) 4 Ida. 53; 36 Pac. 502.

Signatures.

Done in open convention, at Boise City, in the Territory of Idaho, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

WM. H. CLAGETT, *President*,
GEO. AINSLEE,
W. C. B. ALLEN,
ROB'T. ANDERSON,
H. ARMSTRONG,
ORLANDO B. BATTEN,
FRANK W. BEANE,
JAS. H. BEATTY,
J. W. BALLENTINE,
A. D. BEVAN,
HENRY B. BLAKE,
FREDERICK CAMPBELL,
FRANK P. CAVANAH,
A. S. CHANEY,
CHAS. A. CLARK,

I. N. COSTON,
JAS. I. CRUTCHER,
STEPHEN S. GLIDDEN,
JOHN S. GRAY,
WM. W. HAMMEL,
H. S. HAMPTON,
H. O. HARKNESS,
FRANK HARRIS,
SOL. HASBROUK,
C. M. HAYS,
W. B. HEYBURN,
JOHN HOGAN,
J. M. HOWE,
E. S. JEWELL,
G. W. KING,

H. B. KINPORT,
JAS. W. LAMOREAUX,
JOHN LEWIS,
WM. C. MAXEY,
A. E. MAYHEW,
W. J. McCONNEL,
HENRY MELDER,
JOHN H. MYER,
JOHN T. MORGAN,
A. B. MOSS,
AARON F. PARKER,
A. J. PIERCE,
A. J. PINKHAM,
J. W. POE
THOS. PYEATT,
JAS. W. REID,
W. D. ROBBINS,

WM. H. SAVIDGE,
AUG. M. SINNOTT,
JAMES M. SHOUP,
DREW W. STANROD,
FRANK STEUNENBERG,
HOMER STULL,
WILLIS SWEET,
SAM F. TAYLOR,
J. L. UNDERWOOD,
LYCURGUS VINEYARD,
J. S. WHITTON,
EDGAR WILSON,
W. W. WOODS,
JOHN LEMP,
N. I. ANDREWS,
SAMUEL J. PRITCHARD,
J. W. BRIGHAM.

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THE
REVISED CODES
OF
IDAHO

AN ACT

TO COMPILE, REVISE AND CONSOLIDATE THE GENERAL LAWS OF THE STATE OF IDAHO, REPEALING ALL LAWS NOT HEREIN CONTAINED OR HEREBY CONTINUED IN FORCE, AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

That the following Codes, Titles, Chapters, Articles and Sections shall constitute the "REVISED CODES OF IDAHO," and be in force as such: *Provided*, That nothing herein contained shall be construed to adopt or make of force as law the headlines preceding, or the notes following, any section, or any matter inserted by way of mere classification, cross reference or annotation.

GENERAL
PROVISIONS APPLICABLE
TO
ALL THE CODES

GENERAL PROVISIONS APPLICABLE TO ALL THE CODES

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Divisions of Codes.

Sec. 1. These Codes consisting of
Part First, Political;
Part Second, Civil;
Part Third, Remedial;
Part Fourth, Penal,
constitute the Revised Codes of the State of Idaho.

Historical: Rev. St. 1887, Sec. 1.

When Effective.

Sec. 2. An emergency existing therefor, these Revised Codes take effect immediately on their passage and approval by the Governor.

Historical: New section by Commissioner based on Rev. St. 1887, Sec. 2.

Codes Not Retroactive.

Sec. 3. No part of these Revised Codes is retroactive, unless expressly so declared.

Historical: Rev. St. 1887, Sec. 3. C. P. 1881, Sec. 2.

California Legislation: Same: Pol.

Code 1872, Sec. 3; Deering's Code, ib.; Kerr's Code, ib.

Codes Liberally Construed.

Sec. 4. The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to these Revised Codes. The Revised Codes establish the law of this State respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice.

Historical: Rev. St. 1887, Sec. 4. C. P. 1881, Sec. 3.

California Legislation: Same: Pol. Code 1872, Sec. 4; Deering's Code, ib.; Kerr's Code, ib.

Cited: State v. Inhabitants of Pocatello (1891) 3 Ida. 174; 28 Pac. 411; Glidden v. Whittier et al. (1891) 46 Fed. Rep. 437; McDonald v. Burke (1892) 3 Ida. 266; 35 Am. St. Rep. 276; 28 Pac. 440; Wright v. Westheimer (1891) 3 Ida. 232; 28 Pac. 430; Blackfoot Stock Co. v. Delamue (1892) 3 Ida. 291; 29 Pac. 97; Kelly v. Leachman (1893) 3 Ida. 672; 34 Pac. 813; State v. Reed (1894) 3 Ida. 754; 35 Pac. 706; Simmons Hdw. Co. v. Alturas Com. Co. (1895) 4 Ida. 334; 39 Pac. 550; Shaw v. Manville (1895) 4 Ida. 369; 39 Pac. 559; Guynn v. McDaneld (1885) 4 Ida. 605; 43 Pac.

74; in re Dowling (1896) 4 Ida. 715; 43 Pac. 871; Wheeler v. Com. Bk. of Moscow (1896) 5 Ida. 15; 46 Pac. 830; Vollmer v. Spencer (1897) 5 Ida. 557; 51 Pac. 609; Barnes v. Buffalo Pitts Co. (1899) 6 Ida. 519; 57 Pac. 267; Salisbury v. Lane (1900) 7 Ida. 370; 63 Pac. 383; State v. Watkins (1900) 7 Ida. 35; 59 Pac. 1106; First Nat. Bk. of Pocatello v. Bunting & Co. (1900) 7 Ida. 387; 63 Pac. 694; Phillips v. Salmon River Min. Co. (1903) 9 Ida. 149; 72 Pac. 886; Melten v. McMannis (1904) 9 Ida. 418; 75 Pac. 98.

Statutory Construction: This section changes the rule that statutes in derogation of the common law must be strictly construed. Darby v. Hergerty (1887) 2 Ida. 282; 13 Pac. 85.

Codes Continue Existing Law.

Sec. 5. The provisions of these Revised Codes, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Historical: Rev. St. 1887, Sec. 5. C. P. 1881, Sec. 4.

California Legislation: Same: Pol.

Code 1872, Sec. 5; Deering's Code, ib.; Kerr's Code, ib.

Tenure of Offices Preserved.

Sec. 6. All persons who at the time these Revised Codes take effect hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by these Revised Codes.

Historical: Rev. St. 1887, Sec. 6.

California Legislation: This same provision is found in the Pol. Code of 1872 but was later amended by adding

the words "and excepting offices filled by appointment": Deering's Code, Sec. 6; Kerr's Code, ib.

Certain Offices to Cease.

Sec. 7. When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in the Revised Codes, such office ceases at the time the Revised Codes take effect.

Historical: Rev. St. 1887, Sec. 7.

California Legislation: Same: Pol.

Code 1872, Sec. 7; Deering's Code, ib.; Kerr's Code, ib.

Accrued Rights and Pending Actions Not Affected.

Sec. 8. No action or proceeding commenced before the Revised Codes take effect, and no right accrued, is affected by their provisions, but the proceedings therein must conform to the requirements of the Revised Codes as far as applicable.

Historical: Rev. St. 1887, Sec. 8. C. P. 1881, Sec. 5.

California Legislation: Same: Pol. Code 1872, Sec. 8; Deering's Code, ib.;

Kerr's Code, ib.

Cited: Sebree v. Smith (1888) 2 Ida. 357; 16 Pac. 477.

Limitations Not Tolled.

Sec. 9. When a limitation or period of time prescribed in any ex-

isting statute for acquiring a right, or barring a remedy, or for any other purpose, has begun to run before these Revised Codes go into effect, and the same or any limitation is prescribed in these Codes, the time which has already run shall be deemed part of the time herein prescribed as such limitation.

Historical: Rev. St. 1887, Sec. 9.
C. C. P. 1881, Sec. 6.

California Legislation: Somewhat

similar: Pol. Code 1872, Sec. 9; same as amended; Deering's Code, ib.; Kerr's Code, ib.

Holidays.

Sec. 10. Holidays within the meaning of these Revised Codes are: Every Sunday, the first day of January, the twenty-second day of February, the fourth of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public feast, thanksgiving or holiday.

Historical: Rev. St. 1887, Sec. 10.
C. C. P. 1881, Sec. 7.

California Legislation: Same: Pol. Code 1872, Sec. 10; as amended, provides for holidays falling on Sundays;

Deering's Code, ib.; by later amendments the number of holidays is increased: Kerr's Code, ib.

Cross-Reference: Non-judicial days: Sec. 3866.

Computation of Time.

Sec. 11. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

Historical: Rev. St. 1887, Sec. 11.
C. C. P. 1881, Sec. 8.

California Legislation: Same: Pol.

Code 1872, Sec. 12; Deering's Code, ib.; Kerr's Code, ib.

Same: Obligations Maturing on Holidays.

Sec. 12. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

Historical: Rev. St. 1887, Sec. 12.
C. C. P. 1881, Sec. 9.

California Legislation: Same: Pol. Code 1872, Sec. 13; Deering's Code, ib.; Kerr's Code, ib.

Cited: State v. Gilbert (1902) 8 Ida. 346; 69 Pac. 62; Sabin v. Burke (1894) 4 Ida. 179; 37 Pac. 352.

Seal Defined.

Sec. 13. When the seal of a court, public officer or person, is required by law to be affixed to any paper, the word "seal," includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto.

Historical: Rev. St. 1887, Sec. 13.
C. C. P. 1881, Sec. 10.

California Legislation: Same: Pol.

Code 1872, Sec. 14; Deering's Code, ib.; Kerr's Code, ib.

Joint Authority Construed.

Sec. 14. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to

a majority of them, unless it is otherwise expressed in the act giving the authority.

Historical: Rev. St. 1887, Sec. 14.
C. C. P. 1881, Sec. 11.

California Legislation: Same: Pol. Code 1872, Sec. 15; Deering's Code, ib.; Kerr's Code, ib.

Construction: This section does not eliminate the question of notice when required by the Constitution or stat-

utes, but is evidence of the legislative intent to authorize a majority of all deriving their powers from the Legislature to act in every matter over which they have authority, unless otherwise expressed by statute. *Ackley v. Perrin* (1905) 10 Ida. 531; 79 Pac. 192.

Construction of Words and Phrases.

Sec. 15. Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

Historical: Rev. St. 1887, Sec. 15.
C. C. P. 1881, Sec. 12.

California Legislation: Same: Pol. Code 1872, Sec. 16; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Territory v. Evans* (1888) 2 Ida. 425; 17 Pac. 139.

Statutory Terms Defined.

Sec. 16. Words used in these Revised Codes in the present tense, include the future as well as the present; words used in the masculine gender, include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing, includes printing; oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

The following words also have, in the Revised Codes, the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property," includes both real and personal property.
2. The words "real property," are co-extensive with lands, tenements and hereditaments, possessory rights and claims.
3. The words "personal property," include money, goods, chattels, things in action, and evidences of debt.
4. The word "month," means a calendar month, unless otherwise expressed.
5. The word "will," includes codicils.
6. The word "writ," signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process," a writ or summons issued in the course of judicial proceedings.
7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories;

and the words "United States," may include the District and Territories.

Historical: Rev. St. 1887, Sec. 16.
C. C. P. 1881, Sec. 13.

California Legislation: Somewhat similar: Pol. Code 1872, Sec. 17; also as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cited: Hall v. Blackman (1902) 8 Ida. 272; 68 Pac. 19; Johnson v. Hurst (1904) 10 Ida. 308; 77 Pac. 784.

Mark: Sufficiency of Attestation: A mark made in place of a signature is

sufficiently witnessed by the notary's signature affixed to his certificate of acknowledgment of the instrument First Nat. Bk. of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623.

Personal Property: An order in the form of a draft is an evidence of debt and consequently personal property under this section. Murphy v. Montandon (1892) 3 Ida. 325; 35 Am. St. Rep. 279; 29 Pac. 851.

General Repeal of Existing Law.

Sec. 17. No statute law is continued in force because it is consistent with the provisions of the Revised Codes on the same subject, but in all cases provided for therein all statute laws heretofore in force in this State, whether consistent or not with the provisions of the Revised Codes, unless expressly continued in force, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in these Codes provided; nor does it affect any local or special statute not expressly repealed; nor does it affect any outstanding unexpended appropriation.

The following acts and parts of acts are the local and special statutes which are continued in force, except in so far as the same have been modified, amended, superseded or repealed by other legislation. All others are hereby repealed:

(1) All those special and local laws continued in force by an act entitled "An Act to Provide for Continuing in Force Certain Special and Local Laws and Repealing All Others," approved February 10, 1887, which said local and special laws are embraced within the publication known as "Local and Special Laws of Idaho Territory," printed by direction of the 14th session of the Territorial Legislative Assembly.

(2) An Act entitled, "An Act to Provide for a Wagon Road Between Mount Idaho in Idaho County and Little Salmon Meadows in Washington County," Approved February 5, 1889. (Laws 1889, 30.)

(3) An act entitled, "An Act Authorizing the State of Oregon to Erect, Maintain and Operate a Hatchery in the Territory of Idaho." Approved February 7, 1889. (Laws 1889, 54.)

(4) An act entitled, "An Act to Annex a Portion of Nez Perce County to Latah County for School Purposes." Approved February 7, 1889. (Laws 1889, 56.)

(5) An act entitled, "An Act to Invest the Money in the Territorial General School Fund of Idaho Territory." Approved February 7, 1889. (Laws 1889, 59.)

(6) An act entitled, "An Act Supplementary to an Act Entitled, 'An Act to Provide for a Wagon Road Between Mount Idaho in Idaho County and Little Salmon Meadows in Washington County,'" Approved February 14, 1891; re-enacted February 2, 1899. (Laws 1891, 43; Laws 1899, 23.)

(7) An act entitled "An Act Concerning and Providing for the Funding of the Bonded and Other Indebtedness of the State of Idaho at the Date of Admission." Approved March 14, 1891; re-enacted February 10, 1899. (Laws 1891, 211; Laws 1899, 144.)

(8) An act amendatory of the charter of the City of Lewiston. Approved February 10, 1893; re-enacted February 9, 1899. (Laws 1893, 19; Laws 1899, 171.)

(9) An act entitled, "An Act to Provide for the Internal Improvement of the State by the Construction of a System of Wagon Roads," etc. Approved February 16, 1893; re-enacted February 10, 1899. (Laws 1893, 23; Laws 1899, 173.)

(10) An act amendatory of the charter of the City of Lewiston. Approved March 6, 1893; re-enacted February 14, 1899. (Laws 1893, 162; Laws 1899, 225.)

(11) An act entitled, "An Act to Amend Section 16 of an Act Entitled, 'An Act to Provide for the Internal Improvement of the State,' " etc. Approved March 6, 1893; re-enacted February 10, 1899. (Laws 1893, 169; Laws 1899, 173, Sec. 16.)

(12) An act entitled, "An Act Providing for the Issue of State Bonds for the Benefit of the Albion State Normal School and the Lewiston State Normal School," etc. Became a law March 7, 1895. (Laws 1895, 64.)

(12a) An act to amend Section 8 of an act entitled, "An Act Creating and Organizing the Counties of Elmore and Logan," etc. Approved March 9, 1895; re-enacted February 16, 1899. (Laws 1895, 87; Laws 1899, 280.)

(13) An act entitled, "An Act Providing for the Issuing of State Bonds to the Amount of Twenty-five Thousand Dollars for the Improvements of the State Insane Asylum," etc. Approved March 11, 1895. (Laws 1895, 148.)

(14) An act entitled, "An Act Legalizing the Incorporation of the Village of Coeur d'Alene," etc. Approved March 8, 1897; re-enacted February 18, 1899. (Laws 1897, 44; Laws 1899, 301.)

(15) An Act amendatory of the charter of the City of Boise. Approved March 12, 1897; re-enacted February 21, 1899. (Laws 1897, 85; Laws 1899, 310.)

(16) An act entitled, "An Act to Vacate a Part of First Street in Boise City." Approved March 12, 1897; re-enacted February 18, 1899. (Laws 1897, 137; Laws 1899, 318.)

(17) An act amendatory of the charter of the City of Lewiston. Approved February 28, 1899. (Laws 1899, 331.)

(18) An act entitled, "An Act to Validate and Legalize State, County, School, Municipal or Other Bonds Issued Under Acts of the First, Second, Third and Fourth Sessions of the Legislature of the State of Idaho." Approved March 6, 1899. (Laws 1899, 368.)

(19) An act entitled, "An Act Providing for the Issue of State Bonds for the Purchase of Chemicals and Chemical and Physical Apparatus, and for the Erection of Two Dormitories for the Lewiston State Normal School," etc. Approved March 18, 1899. (Laws 1899, 373.)

(20) An act entitled, "An Act to Amend Section 20 of an

Act * * * Entitled, 'An Act to Provide for the Internal Improvement of the State,' " etc. Approved March 4, 1899. (Laws 1899, 399.)

(21) An act entitled, "An Act to Amend Section 21 of an Act * * * Entitled, 'An Act to Provide for a Wagon Road Between Mount Idaho in Idaho County and Little Salmon Meadows in Washington County,' " etc. Approved March 7, 1899. (Laws 1899, 400.)

(22) An act amendatory of the charter of the City of Lewiston. Approved March 6, 1899. (Laws 1899, 444.)

(23) An act amendatory of the charter of the City of Lewiston. Approved March 6, 1899. (Laws 1899, 447.)

(24) An act amendatory of the charter of the City of Lewiston. Approved March 6, 1899. (Laws 1899, 450.)

(25) An act amendatory of the charter of the City of Lewiston. Approved March 13, 1899. (Laws 1899, 459.)

(26) An act entitled, "An Act to provide for the Issue of State Bonds for the Construction, Improvement and Furnishing of the Public Buildings of the State," etc. Approved March 9, 1899. (Laws 1899, 459.)

(27) Sections 15 to 25, inclusive, of an act entitled, "An Act to Establish and Maintain a School to Be Called the Academy of Idaho at Pocatello," etc. Approved March 11, 1901. (Laws 1901, 21.)

(28) An act entitled, "An Act to Provide for the Issuance of State Bonds to Pay Claims Against the State of Idaho," etc. Approved March 21, 1901. (Laws 1901, 33.)

(29) An act entitled, "An Act Providing for the Issue of State Bonds for the Purpose of Completing the Present Building and for the Erection of Two Dormitories for the Albion State Normal School," etc. Approved March 11, 1901. (Laws 1901, 74.)

(30) An act entitled, "An Act to provide for the Internal Improvement of the State by Construction of a Wagon Road in the Counties of Idaho and Washington, and Appropriating Money Therefor." Approved March 5, 1901. (Laws 1901, 84.)

(31) An act entitled, "An Act to Amend an Act Entitled, 'An Act to Incorporate Boise City, in Ada County,' " etc. Approved March 14, 1901. (Laws 1901, 109.)

(32) An act entitled, "An Act Providing for the Issue of State Bonds for the Purpose of Adding Twenty Rooms to Each Dormitory of the Lewiston State Normal School," etc. Approved March 16, 1901. (Laws 1901, 133.)

(33) An act entitled, "An Act Legalizing the Improvement of the Town of Post Falls, Kootenai County, Idaho," etc. Approved March 14, 1901. (Laws 1901, 154.)

(34) An act entitled, "An Act Providing for the Issuing of State Bonds for the Erection of a School of Science Hall, and for the Erection of a Girls' Dormitory," etc. Approved March 14, 1901. (Laws 1901, 158.)

(35) An act entitled, "An Act to Amend Sections 4 and 6 of 'An Act to Provide for the Issue of State Bonds for the Construction, Improvement and Furnishing of the Public Buildings of the State,' " etc. Approved March 12, 1901. (Laws 1901, 163.)

(36) An act amendatory of the charter of the City of Lewiston. Approved March 16, 1901. (Laws 1901, 208.)

(37) An act entitled, "An Act Providing for the Issuance of State Bonds for the Refunding of the Bonded Indebtedness of the State," etc. Approved March 14, 1901. (Laws 1901, 227.)

(38) Sections 20 to 26, inclusive, of an act entitled, "An Act Entitled an Act to Establish the Idaho Industrial Reform School," etc. Approved February 16, 1903. (Laws 1903, 12.)

(39) Sections 1 to 9, inclusive, of an act entitled, "An Act to Locate and Provide a Supreme Court Building, Furniture and a Law Library Therefor at Lewiston, Idaho," etc. Approved February 20, 1903. (Laws 1903, 42.)

(40) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds in the Sum of Thirty Thousand Dollars and Appropriating the Proceeds Thereof to the Academy of Idaho," etc. Approved February 27, 1903. (Laws 1903, 51.)

(41) An act entitled, "An Act Providing for the Construction of a Wagon Road Bridge Across the Snake River Between the Counties of Oneida and Blaine," etc. Approved March 11, 1903. (Laws 1903, 54.)

(42) An act entitled, "An Act to Provide for the Construction of a Wagon Road in the Counties of Boise and Idaho," etc. Approved March 11, 1903. (Laws 1903, 83.)

(43) An act amendatory of the charter of the City of Lewiston. Approved March 9, 1903. (Laws 1903, 105.)

(44) An act entitled, "An Act to Provide for the Internal Improvement of the State by the Construction of a Bridge Across Salmon River in the County of Lemhi, and Appropriating Money Therefor." Approved March 11, 1903. (Laws 1903, 146.)

(45) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof to the Albion State Normal School," etc. Approved March 4, 1903. (Laws 1903, 208.)

(46) An act entitled, "An Act to Amend Sections 19 and 20 of an Act Entitled, 'An Act to Establish the Idaho Industrial Reform School,'" etc. Approved March 6, 1903. (Laws 1903, 291.)

(47) An act entitled, "An Act to Provide for the Further Loan and Further Issuance of State Bonds Under That Certain Act Entitled, 'An Act to Provide for the Issuance of State Bonds and to Pay Claims Against the State of Idaho,'" etc. Approved March 16, 1903. (Laws 1903, 292.)

(48) An act entitled, "An Act Providing Money to Pay Certain Appropriations Made by the Legislature, and to Pay Certain Deficiency Claims Against the State of Idaho by Providing for the Issuance of Bonds," etc. Approved March 16, 1903. (Laws 1903, 308.)

(49) An act entitled, "An Act Making Disposition of Certain Moneys in the Hands of the Secretary of the Board of Trustees of the Lewiston State Normal School, and Creating a Fund for the Maintenance of the Library of Said Institution." Approved March 4, 1903. (Laws 1903, 426.)

(50) An act entitled, "An Act Providing for Issuance of State Bonds for the Erection and Equipment of an Armory and Gym-

nasium, the Equipment of the Mechanical and Electrical Engineering," etc. Approved March 16, 1903. (Laws 1903, 433.)

(51) An act amendatory of an act incorporating the City of Boise, in Ada County. Approved March 11, 1903. (Laws 1903, 437.)

(52) An act entitled, "An Act to Provide for the Issuance of State Bonds to Improve the Idaho State Penitentiary and Secure and Furnish Water for the Same." Approved March 11, 1903. (Laws 1903, 440.)

(53) An act providing for the issuance of State bonds to provide money for the improvement of the Idaho Industrial Reform School. Approved March 8, 1905. (Laws 1905, 91.)

(54) An act entitled, "An Act for the Purpose of Authorizing the Modification, Enlargement and Improvement of the Present Capitol Building at the City of Boise, State of Idaho, or for Procuring a New Site at Said City of Boise and Erecting Thereon a New Capitol Building and Making Appropriation Therefor." Approved March 3, 1905. (Laws 1905, 155.)

(55) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof to the Academy of Idaho," etc. Approved March 10, 1905. (Laws 1905, 166.)

(56) An act entitled, "An Act Providing the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof to the University of Idaho," etc. Approved March 8, 1905. (Laws 1905, 194.)

(57) Sections 4 to 11, inclusive, to an act providing for the establishment, building and equipment of the Northern Idaho Insane Asylum. Approved March 7, 1905. (Laws 1905, 196.)

(58) An act providing for the issuance and sale of State bonds for the improvement of the Lewiston State Normal School. Approved March 8, 1905. (Laws 1905, 203.)

(59) An act entitled, "An Act to Provide for the Construction of a System of Wagon Roads and Trails in the Intermountain Region of Idaho," etc. Approved March 8, 1905. (Laws 1905, 206.)

(59a) An act providing for the issuance and sale of bonds for the improvement of the Albion State Normal School. Approved March 9, 1905. (Laws 1905, 214.)

(60) An act entitled, "An Act to Amend an Act * * * Entitled, 'An Act to Provide for the Issuance of State Bonds to Improve the Idaho State Penitentiary,'" etc. Approved March 6, 1905. (Laws 1905, 234.)

(61) An act entitled, "An Act Making Provision for Moneys to Be Used in the Further Improvement of the Idaho State Penitentiary," etc. Approved March 6, 1905. (Laws 1905, 235.)

(62) An act entitled, "An Act Levying and Requiring the Collection of a Special Ad Valorem Tax for the Payment of the Interest Upon Certain Bonds Issued by the State of Idaho, as the Same Becomes Due, and Also for the Payment of the Principal," etc. Approved March 8, 1905. (Laws 1905, 280.)

(63) An act authorizing the turning over of the Soldiers' Home, near Boise, to the Government of the United States. Approved March 2, 1905. (Laws 1905, 295.)

(64) An act entitled, "An Act Legalizing the Incorporation of the Village of Oakley," etc. Approved February 11, 1905. (Laws 1905, 330.)

(65) An act entitled, "An Act to Amend Section 1 of 'An Act to Create the Independent School District of Boise City,'" etc. Approved March 10, 1905. (Laws 1905, 372.)

(66) An act entitled, "An Act Creating and Establishing the Normal School Fund," etc. Approved March 6, 1905. (Laws 1905, 393.)

(67) An act entitled, "An Act Making Provision for Moneys to Be Used in the Improvement, Repair and Completion of Buildings Belonging to Certain State Institutions," etc. Approved March 6, 1905. (Laws 1905, 400.)

(68) An act entitled, "An Act Creating and Establishing the Soldiers' Home Fund," etc. Approved March 6, 1905. (Laws 1905, 405.)

(69) An act entitled, "An Act Creating and Establishing the Penitentiary Fund," etc. Approved March 6, 1905. (Laws 1905, 406.)

(70) An act entitled, "An Act Creating and Establishing the Insane Asylum Fund," etc. Approved March 6, 1905. (Laws 1905, 407.)

(71) An act entitled, "An Act Creating and Establishing the Academy of Idaho Fund," etc. Approved March 6, 1905. (Laws 1905, 409.)

(72) An act entitled, "An Act Making Provision for Moneys to Be Used in the Improvement of the Idaho Soldiers' Home," etc. Approved March 6, 1905. (Laws 1905, 410.)

(73) An act entitled, "An Act Creating and Establishing the Idaho Industrial Reform School Fund," etc. Approved March 6, 1905. (Laws 1905, 415.)

(74) An act entitled, "An Act Creating and Establishing the University Fund," etc. Approved March 6, 1905. (Laws 1905, 417.)

(75) An act entitled, "An Act Creating and Establishing the Scientific School Fund," etc. Approved March 6, 1905. (Laws 1905, 418.)

(76) An act entitled, "An Act Creating and Establishing the Agricultural College Fund," etc. Approved March 6, 1905. (Laws 1905, 419.)

(77) An act entitled, "An Act Creating and Establishing the State Charitable Institutions Fund," etc. Approved March 6, 1905. (Laws 1905, 421.)

(78) An act providing for the survey of certain unsurveyed public lands of the United States within the State of Idaho. Approved March 6, 1905. (Laws 1905, 422.)

(79) An act entitled, "An Act Prohibiting the Further Issuance of Bonds Under the Provisions of That Certain Act of the Legislature of the State of Idaho, Approved March 16, 1903," etc. Approved March 6, 1905. (Laws 1905, 429.)

(80) An act entitled, "An Act to Amend an Act Entitled, 'An Act to Create the Independent School District of Boise City,'" etc. Approved February 15, 1907. (Laws 1907, 7.)

(81) An act amendatory to an act creating and establishing the Scientific School Fund. Approved February 19, 1907. (Laws 1907, 26.)

(82) An act entitled, "An Act to Amend Section 2 of an Act Entitled, 'An Act Creating and Establishing the Agricultural College Fund,' " etc. Approved February 19, 1907. (Laws 1907, 27.)

(83) An act amendatory of an act creating the independent school district of Emmettsville in Ada County. Approved February 19, 1907. (Laws 1907, 31.)

(84) An act entitled, "An Act to Amend an Act Entitled, 'An Act to Incorporate Boise City in Ada County,' * * * and to Amend an Act Entitled, 'An Act Amending the Charter of the City of Boise,' " etc. Approved February 22, 1907. (Laws 1907, 57.)

(85) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof to the Academy of Idaho," etc. Approved March 7, 1907. (Laws 1907, 135.)

(86) An act entitled, "An Act Providing for the Issuing of State Bonds * * * for the Additional Buildings and Improvements of the Northern Idaho Insane Asylum," etc. Approved March 7, 1907. (Laws 1907, 138.)

(87) An act entitled, "An Act Providing for the Issuance of State Bonds to Provide Money for the Erection of a Girls' Cottage, Boys' Cottage, East Wing for Administration Building, and Procuring a Water Supply at the Idaho Industrial Training School," etc. Approved March 7, 1907. (Laws 1907, 141.)

(88) An act entitled, "An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof to the University of Idaho," etc. Approved March 7, 1907. (Laws 1907, 144.)

(89) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds in the Sum of Thirty Thousand Dollars and Appropriating the Proceeds Thereof to the Continuance of the Construction of the Capitol Building at Boise, Idaho," etc. Approved March 7, 1907. (Laws 1907, 149.)

(90) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof to Supplying a Portion of the Funds Necessary for Erecting and Rebuilding the Main Building of the University of Idaho," etc. Approved March 7, 1907. (Laws 1907, 153.)

(91) An act entitled, "An Act to Provide for the Completion of the Atlanta Road in the Counties of Ada, Boise and Elmore," etc. Approved March 9, 1907. (Laws 1907, 172.)

(92) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * for the Purpose of Completing the Girls' Dormitory of the Albion State Normal School," etc. Approved March 12, 1907. (Laws 1907, 228.)

(93) An act entitled, "An Act Making Disposition of Certain Moneys in the Hands of the Secretary of the Board of Trustees of the Lewiston State Normal School, and Creating a Fund for the Improvement of the Buildings and Grounds of Said Institution." Approved March 12, 1907. (Laws 1907, 233.)

(94) An act providing for the issuance and sale of bonds for the internal improvement of the State. Approved March 12, 1907. (Laws 1907, 242.)

(95) An act entitled, "An Act Providing for the Issuance and Sale of State Bonds * * * and Appropriating the Proceeds Thereof for the Construction of a Wagon Road Between * * * the Town of Meadows in Washington County, and the Payette Lakes, in Boise County," etc. Approved March 12, 1907. (Laws 1907, 251.)

(96) An act entitled, "An Act Providing for the Issue, Sale and Redemption of State Bonds for the Purpose of Erecting a Dormitory for Women at Lewiston State Normal School," etc. Approved March 12, 1907. (Laws 1907, 256.)

(97) An act entitled, "An Act Levying and Requiring the Collection of a Special Ad Valorem Tax for the Payment of the Interest Upon Certain Bonds Issued by the State of Idaho," etc. Approved March 12, 1907. (Laws 1907, 260.)

(98) An act entitled, "An Act Making Provision for Moneys to Be Used in the Improvement of the Idaho Soldiers' Home," etc. Approved March 12, 1907. (Laws 1907, 295.)

(99) An act amendatory of the charter of the City of Lewiston. Approved March 13, 1907. (Laws 1907, 349.)

(100) An act entitled, "An Act Providing for the Issue and Sale of Debenture Warrants for the Purpose of Making the State Capitol Appropriation of March 3, 1905, More Fully Available." Approved March 15, 1907. (Laws 1907, 525.)

(101) An act entitled, "An Act to Amend Section 7 of an Act Entitled, 'An Act for the Purpose of Authorizing the Modification, Enlargement and Improvement of the Present Capitol Building at the City of Boise,' " etc. Approved March 16, 1907. (Laws 1907, 538.)

Historical: Rev. St. 1887, Sec. 17, rewritten by the Commissioner so as to except unexpended outstanding appropriations, if any, from the scope of the repeal, and so as to specifically enumerate the special and local acts and parts of acts preserved by these Codes. This enumeration is made without any attempt on the part of the Commissioner to determine how far these special or local acts are still in force, and they are continued in force only so far as they have not been superseded, repealed, amended or modified by subsequent legislation. Thus, for example, all the Lewiston charter amendments are included,

while many, if not all of them, are superseded by the 1907 charter. It was thought that it would be safer to continue all special and local legislation in this manner, rather than attempt to make an independent examination and determination of their present force, as the Codes are not supposed to deal with special and local legislation at all.

California Legislation: Similar: Pol. Code 1872, Sec. 18; Deering's Code, ib.; Kerr's Code, ib.

Cited: Cunningham v. George (1892) 3 Ida. 456; 31 Pac. 809.

Common Law in Force.

Sec. 18. The common law of England, so far as it is not repugnant to, or inconsistent with, the Constitution or laws of the United States, in all cases not provided for in these Revised Codes, is the rule of decision in all the courts of this State.

Historical: Rev. St. 1887, Sec. 18. See 1 Ter. Ses. (1864) 527, Sec. 1.

California Legislation: Almost iden-

tical: Deering's Pol. Code, Sec. 4468; Kerr's Code, ib.

Cited: *People v. Havird* (1889) 2 Ida. 531; 25 Pac. 294.

Doctrine of Riparian Rights: The doctrine of riparian rights is a part of

the common law and consequently a part of the law of this State. (Dis. op.) *Drake v. Earhart* (1890) 2 Ida. 750; 23 Pac. 541.

Prior Legislation Repealed.

Sec. 19. All general acts and parts and clauses of acts of a general nature, passed prior to the tenth session of the State Legislature, are hereby repealed, and these Revised Codes are in force in lieu thereof; but such repeal does not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal takes effect, but all rights and liabilities under said repealed acts continue, in the same manner as if said repeal had not been made.

Historical: Rev. St. 1887, Sec. 19. Changing "fourteenth session of Legislative Assembly" to "fourth session of State Legislature."

California Legislation: See Pol. Code 1872, Sec. 18; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Cunningham v. George* (1892) 3 Ida. 456; 31 Pac. 809.

Scope of Revision: Whatever is included in a statutory revision must be construed together as the law, all that formerly existed but is not included is repealed. *Territory v. Evans* (1890) 2 Ida. 651; 23 Pac. 232.

Past Offenses May Be Prosecuted.

Sec. 20. All offenses committed, and all penalties or forfeitures incurred prior to said repeal, may be prosecuted and punished in the same manner and with the same effect as if said repeal had not been made.

Historical: Rev. St. 1887, Sec. 20.

POLITICAL CODE

PART FIRST---POLITICAL

POLITICAL CODE

PRELIMINARY PROVISIONS

Section

21. Title and how cited.

Title and How Cited.

Sec. 21. Part First of these Revised Codes shall be known as the Political Code of the State of Idaho, and whenever cited, enumerated, referred to, or amended, may be designated simply as the Political Code, adding, when necessary, the number of the section.

Historical: Rev. St. 1887, Sec. 100.
California Legislation: See. Pol.

Code 1872, Sec. 1; Deering's Code,
ib.; Kerr's Code, ib.

TITLE 1

POLITICAL DIVISIONS

Chapter

1. Seat of government.
2. Counties.
3. Legislative districts.
4. Judicial districts.

Chapter

5. Cessions to the Federal Government and assent to acts of Congress.

CHAPTER 1.

SEAT OF GOVERNMENT.

Section

22. Location.

Location.

Sec. 22. The seat of government of this State is at Boise City, in the County of Ada.

Historical: Rev. St. 1887, Sec. 105.
See 2 Ter. Ses. (1864) 427, Sec. 1.

California Legislation: Same except as to place: Pol. Code 1872, Sec. 145; Deering's Code, ib; Kerr's Code, ib.

Cross Reference: Seat of government located at Boise City for twenty years from the admission of the State: Const. Art. 10, Sec. 2.

CHAPTER 2.

COUNTIES.

Section

23. State divided into counties
- 23a. Ada County.
- 23b. Bannock County.
- 23c. Bear Lake County.
- 23d. Bingham County.
- 23e. Blaine County.
- 23f. Boise County.
- 23g. Bonner County.
- 23h. Canyon County.
- 23i. Cassia County.
- 23j. Custer County.
- 23k. Elmore County.

Section

- 23l. Fremont County.
- 23m. Idaho County.
- 23n. Kootenai County.
- 23o. Latah County.
- 23p. Lemhi County.
- 23q. Lincoln County.
- 23r. Nez Perce County.
- 23s. Oneida County.
- 23t. Owyhee County.
- 23u. Shoshone County.
- 23v. Twin Falls County.
- 23w. Washington County.

State Divided Into Counties.

Sec. 23. The State is divided into twenty-three counties, the boundaries and county seats of which are defined and fixed by the following sections.

Historical: New section by Commissioner.

Cross Reference: Restrictions on

the creation of new counties and the division of old counties: Const. Art. 18, Secs. 3, 4.

Ada County.

Sec. 23a. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the confluence of Moore's Creek with the Boise River at the center of the channel of Boise River; thence in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line of Township 5 North [12th Ter. Ses. 67]; thence due west to the northwest corner of Township 5 North, Range 1 West B. M.; thence due south to the northwest corner of Township 3 North, Range 1 West; thence due east to the northwest corner of Section 4, Township 3 North, Range 1 West; thence due south to the southeast corner of Section 32, Township 2 North, Range 1 West; thence due west to the northwest corner of Township 1 North, Range 1 West B. M.; thence due south to the point in the middle of the channel of Snake River where the line between Township 1 South of Range 1 West and 1 South of Range 2 West B. M. crosses the said river [Laws 1891, 155]; thence southeasterly up the center of the channel of the said Snake River to a point in the middle of the said channel opposite the mouth of Bruneau River; thence extending in a straight line in a northeasterly direction to a point in the center of the channel of Boise River opposite the mouth of Moore's Creek [Laws 1899, 234], the point of beginning, be and the same is hereby organized into the County of Ada, and the county seat of the said county is hereby located at Boise City.

Historical: County created by act approved Dec. 2, 1864, 2nd Ter. Ses. 430. The boundaries above were derived from the following acts: Act defining boundary between Boise and Ada Counties, 12th Ter. Ses. 67; (See

field notes in county recorder's office;) act creating Canyon County, Laws 1891, 155; act defining boundary between Ada and Elmore Counties, Laws 1899, 230 (see field notes in county recorder's office).

Bannock County.

Sec. 23b. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the intersection of the township line between Townships 4 and 5 South with the Snake River; thence down the Snake River southwesterly to the mouth of Portneuf River; thence, up the Portneuf River to what is known as the point of the mountain, about four miles northwest of Pocatello; thence southerly in a straight line to the top of the range; thence along the crest of the mountains between Malad and Marsh Valleys to a point on the top of the range, due west of a point one mile south of the present southern boundary of the townsite of Oxford; thence due east to the Bear Lake County line; thence northerly and easterly along the line of Bear Lake County to the boundary line of the State of Wyoming; thence north to the intersection of Township line between Townships 4 and 5 South with the line of the State of Wyoming; thence west along said township line between Townships 4 and 5 to the place of beginning, be and the same is hereby organized into the County of Bannock, and the county seat of said county is hereby located at the town of Pocatello.

Historical: County created by act approved March 6, 1893. Laws 1893.
170.

Bear Lake County.

Sec. 23c. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the twenty-third mile post on the boundary line between Utah and Idaho, and running thence northerly along the summit of the range of mountains between Cache Valley and Bear Lake Valley to the corner of Townships 9 and 10 South of Range 41 East; thence east twelve miles; thence north to the summit of the divide between the waters of Bear River and the waters of Blackfoot River; thence easterly along said last named summit to the line between Wyoming and Idaho; thence south on said last named line to the southeast corner of Idaho; thence west to the place of beginning, be and the same is hereby organized into the County of Bear Lake, and the county seat of the said county is hereby located at the town of Paris.

Historical: County created by act approved Jan. 5, 1875. See Special and Local Laws, 113.

Bingham County.

Sec. 23d. That all that portion of the State of Idaho contained within the following boundaries, to-wit: Beginning at a point directly north of the Big Southern Butte where the township line between Townships 3 and 4 North meets the said point [15 Ter. Ses. 37; Laws 1893, 94]; thence due south to a point where it intersects with the First Standard Parallel South; thence easterly on the said First Standard Parallel South to the center of the channel of Snake River; thence up the center of the channel of Snake River to the intersection of the township line between Townships 4 and 5 South [Laws 1893, 170]; thence east along the said township line between Townships 4 and 5 South to the boundary line of the State of Wyoming; thence north along the said State boundary line [Laws 1893, 171] to the intersection of the same with the top or comb of the Big Hole mountain range; thence following along the top or comb of the said mountains in a north-westerly direction to the intersection of the same with the line between townships 3 and 4 North [Laws 1903, 222]; thence west along the said township line to the place of beginning, is hereby established as the County of Bingham; and the county seat of the said county is hereby located at the town of Blackfoot.

Historical: County created by act approved Jan. 13, 1885. The boundaries above were derived from the following acts: Act defining boundaries of Bingham County, 15 Ter. Ses. 37;

Act creating Fremont County, Laws 1893, 94; act creating Bannock County, Laws 1893, 170; act to annex portion of Bingham County to Fremont County, Laws 1903, 222.

Blaine County.

Sec. 23e. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point on the township line between Townships 10 and 11 North directly north of the Big Southern Butte, thence due west to Little Lost River [Laws 1899, 111]; thence down Little Lost River to the point where the trail leading to Pass Creek crosses the said Little Lost River; thence in a direct line to the head of Pass Creek; thence down said Pass Creek to

the said Big Lost River; thence along Big Lost River to the mouth of Antelope Creek; thence up Antelope Creek to the divide which separates its waters from those of Little Wood River; thence westerly along and upon the summit of the range of mountains dividing the headwaters of the East Fork of the Salmon River from the waters of the Little or Big Wood River and continuing westerly on the said divide between the East Fork of the Salmon and Wood Rivers to the main Salmon River; thence along the said Salmon River to the mouth of Fall Creek, a stream entering the Salmon River at a point about fifteen miles northerly from Sawtooth City; thence up the said Fall Creek to Pettit Lake in a right line to the right of a creek entering the said lake at the west end thereof; thence up the said last mentioned creek to the summit of the Sawtooth Mountains [15 Ter. Ses. 26]; thence following the summit of the said mountains to where the trail crosses the summit of what is known as Mattingly Creek Divide; thence along the said divide to a point as far east as the range line between Ranges 11 and 12 East; thence due south to the township line between Townships 2 and 3 South [15 Ter. Ses. 37]; thence due east along the said township line to the intersection of the same with the line between Ranges 25 and 26 E. B. M.; thence south along the said range line to the middle of the channel of Snake River; thence up the center of the said channel of Snake River [Laws 1895, 170] to the intersection of the same with the First Standard Parallel South; thence west along the said First Standard Parallel South to a point directly south of the Big Southern Butte [15 Ter. Ses. 37, Sec. 3]; thence due north to the place of beginning, be and the same is hereby organized into the County of Blaine, and the county seat of said county is hereby located at the town of Hailey.

Historical: County created by act approved Mar. 5, 1895, Laws 1895, 31. The boundaries above were derived from the following acts: Act defining the boundaries of Lemhi County, Laws 1899, 111; act defining the boun-

daries of Custer County, 15 Ter. Ses. 26; act defining the boundaries of Bingham County, 15 Ter. Ses. 37, Sec. 3; act creating Elmore County, 15 Ter. Ses. 37; act creating Lincoln County, Laws 1895, 170.

Boise County.

Sec. 23f. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the confluence of Moore's Creek with the Boise River, at the center of the channel of Boise River; thence north 44 degrees and 38 minutes west to a pine tree standing on the south bank of the Payette River at a distance of about two miles north from Pickett's Corral near the mouth of what is known as Black Canyon on said Payette River; thence northerly to a central point on the summit of Squaw Creek Butte; thence northerly on the summit of the dividing range between the waters of Squaw Creek on the east and Haw Creek on the west to the intersection of said dividing ridge with the Second Standard Parallel, U. S. survey [12 Ter. Ses. 67]; thence northerly on the said dividing ridge to the summit dividing the waters of the Payette and Weiser Rivers; thence along the said divide in a northerly direction to a point on the said divide known as Big Rock Flat, where the waters flow into the Little Salmon River; thence in a northeasterly direction on a low divide

separating the waters of the Little Salmon and Payette Rivers to a point due east of a northern point of Little Salmon Meadows [Laws 1905, 303]; thence in an easterly and southeasterly direction along the divide which separates the waters of the Payette River and its tributaries from the waters of Salmon River and its tributaries [Special and Local Laws, 120] to the head of the Middle Fork of Salmon River; thence southerly along the divide which separates the water flowing into the S. Payette River and Bear Valley Creek from that flowing into the main Salmon River and Cape Horn Creek to the summit of the Saw Tooth Mountains; thence southerly along the summit of the Saw Tooth Mountains [15 Ter. Ses. 26] to the headwaters of the North Fork of Boise River; thence down the center of the channel of the North Fork of Boise River and the main Boise River to the place of beginning [3 Ter. Ses. 214], be and the same is hereby organized into the County of Boise, and the county seat of said county is hereby located at Idaho City.

Historical: County created by act approved Feb. 4, 1864, 1 Ter. Ses. 628. The boundaries above were derived from the following acts: Act defining boundaries of Boise and Ada Counties, 12 Ter. Ses. 67 (field notes in

county recorder's office); act defining boundaries of Washington County, Laws 1905, 303; act defining boundaries of Custer County, 15 Ter. Ses. 26; also Special and Local Laws, 120; and 3 Ter. Ses. 214.

Bonner County.

Sec. 23g. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point where the township line between Townships 53 and 54 North intersects the boundary line between the State of Idaho and the State of Washington; thence east on said township line between Townships 53 and 54 North, to the northeast corner of Township 53 North, Range 3 West B. M.; thence north on the range line between Sections 36 and 31 to the northeast corner of Section 36, Township 54 North, Range 3 West B. M.; thence due east six miles to the northeast corner of Section 36, Township 54 North, Range 2 West B. M.; thence south along the range line between Ranges 1 and 2 to the northeast corner of Township 52 North, Range 2 West B. M.; thence east on the township line between Townships 52 and 53 North to the present county line between Kootenai and Shoshone Counties; thence north along the west boundary line of Shoshone County to the northwest corner thereof; thence in an easterly direction along the summit of the Coeur d' Alene range of mountains to the west line of the State of Montana; thence north along the boundary line between the State of Idaho and the State of Montana to the intersection of the international boundary line between the United States of America and Canada; thence west along said international boundary line to the northwest corner of the State of Idaho; thence south along the boundary line between the State of Idaho and the State of Washington to the place of beginning, be and the same is hereby organized into the county of Bonner, and the county seat of the said county is hereby located at the town of Sandpoint.

Historical: County created by act approved Feb. 21, 1907, Laws 1907. 47.

Canyon County.

Sec. 23h. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point in the middle of the channel of Snake River where the line between Township 1 South, Range 1 West, and Township 1 South, Range 2 West B. M., crosses the said river and running thence due north to the northwest corner of Township 1 North, Range 1 West B. M.; thence due east to the southeast corner of Section 32, Township 2 North, Range 1 West; thence due north to the northwest corner of Section 4, Township 3 North, Range 1 West; thence due west to the northwest corner of Township 3 North, Range 1 West; thence due north to the northwest corner of Township 5 North, Range 1 West; thence due east along the township line to the present boundary of Boise County [Laws 1891, 155]; thence along the said boundary line in a northwesterly direction to a pine tree standing on the south bank of the Payette River at a distance of about two miles northerly from Pickett Corral and near the mouth of what is known as Black Canyon on the said Payette River; thence northerly to the central point on the summit of the Squaw Creek Butte; thence northerly on the summit of the dividing ridge between the waters of Squaw Creek on the east and Haw Creek on the west [12 Ter. Ses. 67] to the intersection of the same with the Second Standard Parallel North; thence due west along the Second Standard Parallel North to the middle of the channel of Snake River [Laws 1905, 303]; thence up the middle of the channel of Snake River to the boundary line between Idaho and Oregon; thence south along the boundary line between Idaho and Oregon to the middle of Snake River; thence up the middle of the channel of Snake River to the place of beginning [Laws 1891, 155], be and the same is hereby organized into the County of Canyon, and the county seat of the said county is hereby located at the town of Caldwell.

Historical: County created from portion of Ada County by act approved March 7, 1891, Laws 1891, 155. The boundaries above were derived from the following acts: Act creating Canyon County, Laws 1891, 155; act defining boundary between Boise and Ada Counties, 12 Ter. Ses.

67; act defining boundaries of Washington County, Laws 1905, 303. The act creating the county; Laws 1891, 155, was printed incorrectly in the printed Session Laws, making an error in the boundaries. The correction above was made from the enrolled bill.

Cassia County.

Sec. 23i. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing with the intersection of the middle of the channel of Snake River with the north and south center line of Section 28 in Township 10 South of Range 21 East of Boise Meridian, running thence south on the said center line of said Section 28 to the point of intersection of the north line of the right of way of the Minidoka & Southwestern Railroad Company, which point is 100 feet distant at right angles from the center of the main track of the line of road of said railroad company as the same is now located; running thence in a southwesterly direction along the north line of said railroad right of way to a point where said line intersects the south line of the canal right of way of the Twin Falls

Land & Water Company, which point of intersection is 100 feet distant at right angles from the center line of the main canal of the said Twin Falls Land & Water Company; running thence south to the south line of Section 36 in Township 10 South of Range 20 East of Boise Meridian; thence west to the southwest corner of said Section 36; thence south on the section lines to the south line of Township 11; thence west to the southeast corner of Township 11 South of Range 18 East B. M.; thence south on the range lines to the south line of the State of Idaho [Laws 1907, 40]; thence east along the south boundary line of the State of Idaho to the intersection of the same with the 113 meridian west from Greenwich; thence north along the said meridian to the intersection of the same with the center of the channel of Snake River; thence down the said river in a southwesterly direction to the point of beginning, be and the same is hereby organized into the County of Cassia, and the county seat of the said county is hereby located at the town of Albion. [10 Ter. Ses. 43, as amended 11 Ter. Ses. 339.]

Historical: County created by act approved Jan. 20, 1879, 10 Ter. Ses. 43. The boundaries above were derived from the following acts: Act

creating Cassia County, 10 Ter. Ses. 43; as amended 11 Ter. Ses. 339; act creating Twin Falls County, Laws 1907, 40.

Custer County.

Sec. 23j. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the confluence of the Pahsimeroi River with the Salmon River and running thence up the Pahsimeroi River to the mouth of the Big Creek; thence up Big Creek, and on the line from the head thereof, with the general course of said creek to the summit of the divide between the waters of the Pahsimeroi and Lemhi Rivers; thence southeasterly on the summit of said divide to a point due west from the head waters of said Little Lost River; thence due east to the head waters of said Little Lost River; thence down Little Lost River to a point where the trail leading to Pass Creek crosses Little Lost River; thence in a direct line to the head of Pass Creek; thence down said Pass Creek to Big Lost River; thence along Big Lost River to the mouth of Antelope Creek; thence up Antelope Creek to the divide which separates its waters from those of Little Wood River; thence westerly along and upon the summit of the range of mountains dividing the head waters of the East Fork of Salmon River from the waters of the Little or Big Wood River, and continuing westerly on said divide between the East Fork of Salmon and Wood Rivers to the main Salmon River; thence along said Salmon River to the mouth of Fall Creek, a stream entering the Salmon River at a point about fifteen miles northerly from Sawtooth City; thence up said Fall Creek to Pettit Lake in a right line to the right of a creek entering said lake at the west end thereof; thence up said last mentioned creek to the summit of the Sawtooth Mountains; thence northerly along the summit of the Sawtooth Mountains to the divide which separates the waters flowing into the South Payette River and Bear Valley Creek from those flowing into the main Salmon River and Cape Horn Creek; thence along said divide to the Middle Fork of the Salmon River;

thence down the Middle Fork of the Salmon River to the mouth of Loon Creek; thence up Loon Creek to the mouth of Warm Spring Creek; thence up Warm Spring Creek and to the divide which separates the waters of Yankee Fork on the south and Loon and Deep Creeks on the north, and following said divide in an easterly direction around the head of Panther Creek to the divide between Hat Creek and Ellis Creek; thence on the divide between Hat and Ellis Creeks in an easterly direction to the Salmon River; thence up the main channel of said Salmon River to the place of beginning, be and the same is hereby organized into the County of Custer, and the county seat of said county is hereby located at the town of Challis.

Historical: County created by act approved Jan. 8, 1881, 11 Ter. Ses. 340. The boundaries above were de-

rived from the following acts: Act defining boundaries of Custer County, 15 Ter. Ses. 26.

Elmore County.

Sec. 23k. All that portion of the State of Idaho included within the following boundaries, to-wit: Beginning at a point on the top of the Saw Tooth Range of Mountains where the counties of Blaine, Boise and Custer unite; thence along the present line of Custer County to a point where the said line intersects the summit of the Saw Tooth Range; thence following the spur of said range to where the trail crosses the summit of Mattingly Creek Divide; thence along the said divide to a point as far east as the range line between Ranges 11 and 12 East would come if extended north; thence south to Snake River; thence down the middle of the channel of Snake River to a point opposite the mouth of Bruneau River [15 Ter. Ses. 38; Laws 1895, 31]; thence in a straight line in a northeasterly direction to a point in the center of the channel of Boise River opposite the mouth of Moore's Creek [Laws 1895, 15; re-enacted Laws 1899, 234]; thence upon and along the boundary line of the County of Boise to the place of beginning, be and the same is hereby organized into the County of Elmore, and the county seat of said county is hereby located at the town of Mountainhome.

Historical: County created by act approved Feb. 7, 1889, 15 Ter. Ses. 37. The boundaries above were derived from the following acts: Act

creating county, 15 Ter. Ses. 37; act defining boundary between Ada and Elmore Counties, Laws 1895, 15, re-enacted Laws 1899, 234.

Fremont County.

Sec. 23l. All that portion of the State of Idaho included within the following boundaries, to-wit: Beginning at a point where the northern boundary of the State of Idaho intersects the western boundary of the State of Wyoming; thence running westerly along the northern boundary of the State of Idaho [15 Ter. Ses. 38] to the range line between Ranges 30 and 31, E. B. M.; thence due south along said range line to the southwest corner Township 11 North, Range 31 East B. M., [Laws 1899, 273]; thence due west to a point due north of the Big Southern Butte; thence due south [15 Ter. Ses. 38] to the line between Townships 3 and 4 North; thence east along the said township line between Townships 3 and 4 North

[Laws 1893, 94] to a point where the said line bisects the top or comb of the Big Hole Mountain Range; thence following along the top or comb of the said mountains in a southeasterly direction to the Wyoming line; thence north along the said Wyoming State line to the point of beginning [Laws 1903, 222], be and the same is hereby organized into the County of Fremont, and the county seat of said county is hereby located at the town of St. Anthony.

Historical: County created by act approved Mar. 4, 1893, Laws 1893, 94. The boundaries above were derived from the following acts: Act creating Fremont County, Supra.; act defining boundaries of Bingham County, 15

Ter. Ses. 38; act to annex portion of Lemhi County to Fremont County, Laws 1899, 273; act to annex portion of Bingham County to Fremont County, Laws 1903, 222.

Idaho County.

Sec. 23m. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the junction of the Salmon River with the Snake River; thence up the middle of the channel of Salmon River to the mouth of Deep Creek; thence up the middle of the channel of Deep Creek to the mouth of the Right fork of Deep Creek; thence up the middle of the channel of the Right Fork of Deep Creek to a point where the line between Ranges 1 and 2 West B. M. crosses Deep Creek; thence due north along the said line to the point where the said line crosses Willow Creek; thence down the middle of the channel of Willow Creek to its junction with Lawyer's Canyon; thence down the middle of the channel of Lawyer's Canyon to its junction with the Clearwater River; thence down the middle of the channel of Clearwater River to the mouth of Lolo Creek; thence up the middle of the channel of Lolo Creek to the head of Lolo Creek, and thence in a direct line to the Lolo Pass at the summit of the Bitter Root Mountains; thence southeasterly and southerly following the present defined boundary line between the State of Idaho and the State of Montana [Laws 1899, 79] to a point directly north of the confluence of the Middle Fork of Salmon River with the main Salmon River in the State of Idaho, and running thence south to the confluence of the Middle Fork of Salmon River with the main Salmon River, running thence southerly along the center line or middle of the channel of said Middle Fork of Salmon River [Laws 1903, 48] to the divide which separates the waters of Payette River and its tributaries from the waters of Salmon River and its tributaries [3 Ter. Ses. 214; Special and Local Laws, 120]; thence in a northerly and northwesterly direction along the said divide to the line of Washington County at a point due east of the northern point of Little Salmon Meadows; thence due west to the Little Salmon River; thence down the Little Salmon River to a point due east of the point where the section line between Sections 6 and 7, Township 22 North, Range 1 East, B. M. intersects the said meridian; thence due west to the middle of the main channel of Snake River; thence down the middle of the main channel of Snake River to the mouth of Salmon River, the place of beginning [Laws 1905, 303], be and the same is hereby organized into the County of Idaho, and the county seat of said county is hereby located at the town of Grangeville.

Historical: County created by act approved Feb. 4, 1864, 1 Ter. Ses. 628; boundaries defined 3 Ter. Ses. 214; 8 Ter. Ses. 730; 10 Ter. Ses. 40; Special Laws, 120; 15 Ter. Ses. 54; Laws 1891, 117, re-enacted Laws 1899, 79; Laws 1895, 21, re-enacted Laws 1899, 22. The boundaries above were de-

rived from the following acts: Act to define boundaries of Boise County, Laws 1899, 79; act to define boundaries of Lemhi County, Laws 1903, 48; act defining boundaries, 3 Ter. Ses. 214; Special Laws 120; act to define boundaries of Washington County, Laws 1905, 303.

Kootenai County.

Sec. 23n. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point where the watershed between Hangman's Creek and the Palouse River crosses the boundary line between the States of Idaho and Washington; thence in a southeasterly direction along said watershed to a point where this line crosses the section line between Sections 27 and 28, in Township 43 North, Range 4 West, B. M.; thence south on said section line to the section corner common to Sections 27, 28, 33 and 34, in the same township and range; thence east on this section line to the east boundary of said township and range; thence north on the range line to the northwest corner of Section 31, Township 43 North, Range 3 West, B. M.; thence east along the section line running on the north side of said Section 31 to the northeast corner of Section 33, Township 43 North, Range 1 West B. M.; thence south one mile to the township line between Townships 42 and 43 North; thence east along the said township line [Laws 1905, 334] to a point due north of mouth of South Fork of Clearwater River [1 Ter. Ses. 628]; thence due north along the western boundary of the County of Shoshone to the intersection of the same with the township line between Townships 52 and 53 North in the State of Idaho; thence west on the said township line to the northeast corner of Township 52 North, Range 2 West B. M.; thence north along range line between Ranges 1 and 2 to the northeast corner of Section 36, Township 54 North, Range 2 West B. M.; thence due west six miles to the northeast corner of Section 36, Township 54 North, Range 3 West B. M.; thence south on the range line between Sections 36 and 31 to the northeast corner of Township 53 North, Range 3 West B. M.; thence west on the township line between Townships 53 and 54 North, to a point where the said township line intersects the boundary line between the State of Idaho and the State of Washington [Laws 1907, 47]; thence south along the said State boundary line to the point of beginning [4 Ter. Ses. 126], be and the same is hereby organized into the County of Kootenai, and the county seat of said county is hereby located at the town of Rathdrum.

Historical: County created by act approved Dec. 22, 1864, 2 Ter. Ses. 432. The boundaries above were derived from the following acts: Act defining boundaries of Kootenai County, 4 Ter. Ses. 126; act creating

Shoshone County, 1 Ter. Ses. 628; act defining boundaries between Kootenai and Latah Counties, Laws 1905, 334; act creating Bonner County, Laws 1907, 47.

Latah County.

Sec. 23o. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point where the middle line of Township 37 North intersects the boundary line be-

tween the State of Idaho and the State of Washington [25 U. S. Stat. at Large, 147]; thence north along the said boundary line to a point where the watershed between Hangman's Creek and Palouse River crosses the said boundary line; thence in a southeasterly direction along the said watershed to a point where this line crosses the section line between Sections 27 and 28, in Township 43 North, Range 4 West B. M.; thence south on the said section line to the section corner common to Sections 27, 28, 33 and 34, in the same township and range; thence east on this section line to the eastern boundary of the said township and range; thence north on the range line to the northwest corner of Section 31, Township 43 North, Range 3 West B. M.; thence east along the section line running on the north side of said Section 31 to the northeast corner of Section 33 in Township 43 North, Range 1 West B. M.; thence south one mile to the township line between Townships 42 and 43 North; thence east along the said township line to a point directly north of the mouth of the South Fork of Clearwater River [Laws 1905, 333]; thence due south [1st Ter. Ses. 628; 8th Ter. Ses. 727] to the middle line of Township 38 North; thence west to Big Potlatch Creek, where it first intersects the middle line of Township 38 North; thence down the said creek southwesterly to a point where it intersects the middle line of Township 37 North; thence due west to the point of beginning, be and the same is hereby formed and organized into a county to be known and designated as the County of Latah, and the county seat of the said county is hereby located at the town of Moscow. [25 U. S. Stat. 147.]

Historical: County created by act of Congress approved May 14, 1888, 25 U. S. Stat. 147. The boundaries above were derived from the following acts: Act creating Latah County,

25 U. S. Stat. 147; act defining boundary line between Latah and Kootenai Counties, Laws 1905, 333; act creating Shoshone County, 1st Ter. Ses. 628.

Lemhi County.

Sec. 23p. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point on the boundary line between the State of Idaho and the State of Montana directly north of the confluence of the Middle Fork of Salmon River with the main Salmon River in the State of Idaho, and running thence south to the confluence of the Middle Fork of the Salmon River with the main Salmon River, running thence southerly along the center line of the middle of the channel of the said Middle Fork of the Salmon River to the mouth of Loon Creek [Laws 1903, 48]; thence up Loon Creek to the mouth of Warm Springs Creek; thence up Warm Springs Creek and to the divide which separates the waters of Yankee Fork on the south and Loon and Deep Creeks on the north and following the said divide in an easterly direction around the head of Panther Creek to the divide between Hat Creek and Ellis Creek; thence on the divide between Hat and Ellis Creeks in an easterly direction to the Salmon River; thence up the main channel of said Salmon River to the confluence of the Pahsimeroi River with the Salmon River, and running thence up the Pahsimeroi River to the mouth of Big Creek; thence up Big

Creek and on a line from the head thereof with the general course of the said creek to the summit of the divide between the waters of the Pahsimeroi River and the Lemhi River; thence southeasterly on the summit of the said divide to a point due west from the head waters of the Little Lost River; thence due east to the head waters of the Little Lost River; thence down the Little Lost River [15th Ter. Ses. 26] to the intersection of the same with the township line between Townships 10 and 11 North; thence due east along the said Township line [Laws 1899, 111] to the southeast corner of Township 11 North, Range 31 East B. M.; thence due north along the range line between Ranges 30 and 31 East B. M. to the intersection of the same with the boundary line of the State of Montana [Laws 1899, 273]; thence generally in a northwesterly direction along the said State boundary line to the point of beginning, be and the same is hereby organized into the County of Lemhi, and the county seat of the said county is hereby located at the town of Salmon.

Historical: County created by act approved Jan. 9, 1869, 5th Ter. Ses. 117. The boundaries above were derived from the following acts: Act to define portion of boundary of Lemhi County, Laws 1903, 48; act to define

boundaries of Custer County, 15th Ter. Ses. 26; act to define boundaries of Lemhi County, Laws 1899, 111; act to annex portion of Lemhi County to Fremont County, Laws 1899, 273.

Lincoln County.

Sec. 23q. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at the northeast corner of Township 3 South, Range 11 East B. M.; thence south following the township line between Ranges 11 and 12 East B. M. to a point where the said line intersects the middle of the channel of Snake River; thence easterly following the middle of the channel of Snake River to a point where the range line between Ranges 25 and 26 East intersect said channel; thence north along said range line to a point where said line intersects the township line between Townships 2 and 3 South; thence west along said line to the place of beginning, is hereby organized into the County of Lincoln, and the county seat of said county is hereby located at the town of Shoshone.

Historical: County created by act approved March 18, 1895, Laws 1895, 170.

Nez Perce County.

Sec. 23r. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point in the middle of the channel of Snake River opposite the junction of Salmon River; thence up the middle of the channel of Salmon River to the mouth of Deep Creek; thence up the middle of the channel of Deep Creek to the mouth of the Right Fork of Deep Creek; thence up the middle of the channel of said Right Fork of Deep Creek to the point where the line between Ranges 1 and 2 West B. M. crosses Deep Creek; thence due north along the said line to the point where the said line crosses Willow Creek; thence down the middle of the channel of Willow Creek to its junction with Lawyer's Canyon; thence

down the middle of the channel of Lawyer's Canyon to its junction with Clearwater River; thence down the middle of the channel of Clearwater River to the mouth of Lolo Creek; thence up the middle of the channel of Lolo Creek to the head of Lolo Creek, and thence in a direct line to the Lolo Pass at the summit of the Bitter Root Mountains; thence in a northwesterly direction along the western boundary of the State of Montana to the intersection of the same [Laws 1899, 79] with the northern boundary line of Township 41 North; thence west along the said boundary line [Laws 1903, 204] to a point directly north of the mouth of the South Fork of Clearwater River [1st Ter. Ses. 628]; thence due south to a point where the middle line of Township 38 North intersects the said line; thence west to Big Potlatch Creek, where it first intersects with the said middle line of Township 38 North; thence down the said creek southwesterly to a point where it intersects the middle line of Township 37 North; thence due west to the boundary line between the State of Idaho and the State of Washington [25 Stat. at Large, 147]; thence south along the said boundary line to the point of beginning, be and the same is hereby organized into the County of Nez Perce, and the county seat of the said county is hereby located at the town of Lewiston.

Historical: Act creating county approved Feb. 4, 1864, 1st Ter. Ses. 628; boundaries defined 4th Ter. Ses. 126; boundaries defined 13th Ter. Ses. 126. The boundaries above were derived from the following acts. Act defining boundaries of Latah County, Laws

1899, 79; act to annex portion of Shoshone County to Nez Perce County, Laws 1903, 204; act creating Shoshone County, 1st Ter. Ses. 628; act of Congress creating Latah County, 25 U. S. Stat. 147.

Oneida County.

Sec. 23s. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point where the 113 meridian west from Greenwich intersects with the northern boundary line of the State of Utah, and running thence north along the said meridian to Snake River; thence up said river [1 Ter. Ses. 625] to the mouth of the Portneuf River and up the Portneuf River to what is known as the Point of the Mountain, about four miles northwest of Pocatello; thence southerly in a straight line to the top of the range; thence along the crest of the mountains between Malad and Marsh Valleys to a point on the top of the range due west of a point one mile south of the present southern boundary of the townsite of Oxford; thence due east to the Bear Lake County line [Laws 1893, 171]; thence southerly along the said Bear Lake County line, which is the summit of the range of mountains between Cache and Bear Lake Valleys to the 23rd mile post on the boundary line between the State of Utah and the State of Idaho [8 Ter. Ses. 720]; thence west on the State boundary line to the place of beginning, be and the same is hereby organized into the County of Oneida, and the county seat of said county is hereby located at Malad City.

Historical: County created by act approved Jan. 2, 1864, 1 Ter. Ses. 625. The boundaries above were derived from the following acts: Act creat-

ing county, 1 Ter. Ses. 625; act creating Bannock County, Laws 1893, 171; act creating Bear Lake County, 8 Ter. Ses. 720.

Owyhee County.

Sec. 23t. All that portion of the State of Idaho included within the following boundaries, to-wit: Beginning on the Snake River at mouth of the Owyhee River and running due south along the eastern boundary line of the State of Oregon to the northern boundary of the State of Nevada; thence east along the northern boundary of the State of Nevada [1st Ter. Ses. 628] to the 38th meridian of longitude west from Washington; thence north along the said meridian to the Snake River [10th Ter. Ses. 43]; thence down the channel of the Snake River in a westerly direction to the mouth of the Owyhee River, the place of beginning, be and the same is hereby organized into the County of Owyhee, and the county seat of the said county is hereby located at Silver City.

Historical: County created Dec. 31, 1863, 1st Ter. Ses. 624; act locating county seat at Silver City approved Jan. 2, 1867. The boundaries above were derived from the following acts:

Act creating Owyhee County, 1st Ter. Ses. 624; boundaries redefined, 1st Ter. Ses. 628; act creating Cassia County, 10th Ter. Ses. 43.

Shoshone County.

Sec. 23u. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point where the township line between Townships 41 and 42 North intersects the western boundary of the State of Montana; thence in a northerly direction along the said boundary and with the Bitter Root Range of Mountains until the said range turns in a westerly direction and is called Coeur d' Alene; thence with the said Coeur d' Alene Range of Mountains in a westerly direction until a point is attained due north of the mount of the South Fork of the Clearwater River [1st Ter. Ses. 628]; thence south to the township line between Townships 41 and 42 North; thence east on the said township line to the intersection of the same with the boundary line of the State of Montana, the place of beginning [Laws 1903, 204], be and the same is hereby organized into the County of Shoshone, and the county seat of the said county is hereby located at the town of Wallace.

Historical: County created by act approved Feb. 4, 1864, 1st Ter. Ses. 628. The boundaries above were derived from the following acts: Act

creating Shoshone County, 1st Ter. Ses. 628; act to annex portion of Shoshone County to Nez Perce County, Laws 1903, 204.

Twin Falls County.

Sec. 23w. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing with the intersection of the middle of the channel of the Snake River with the north and south center line of Section 28, Township 10 South, Range 21 East B. M., running thence south on said center line of Section 28 to the point of Intersection of the north line of the right of way of the Minidoka & Southwestern Railroad Company, which point is 100 feet distant, at right angles, from the center of the main track of the line of road of said railroad company as the same is now located; running thence in a southwesterly direction along the north line of said railroad right of way to a point where said line intersects the south line of the canal right of way of the Twin Falls Land & Water

Company, which point of intersection is 100 feet distant, at right angles, from the center line of the main canal of said Twin Falls Land & Water Company; running thence south to the south line of Section 36, Township 10 South, Range 20 East B. M.; thence west to the southwest corner of Section 36; thence south on the section lines to the south line of Township 11; thence west to the southeast corner of Township 11 South, Range 18 East B. M.; thence south on the range lines to the south line of the State of Idaho; thence due west along the south line of the State of Idaho to the 38th meridian of longitude west from Washington; thence north along said meridian to the intersection of the center of the main channel of Snake River; thence up the center of the main channel of Snake River to the point of beginning, be and the same is hereby organized into the County of Twin Falls, and the county seat of said county is hereby located at the village of Twin Falls.

Historical: County created by act approved Feb. 21, 1907, Laws 1907, 40.

Washington County.

Sec. 23w. All that portion of the State of Idaho included within the following boundaries, to-wit: Commencing at a point on Snake River, where the Second Standard Parallel intersects the same, running thence east along said line to where said line intersects the boundary line between the Counties of Boise and Canyon; thence northerly upon said boundary line to the summit dividing the waters of the Payette and Weiser Rivers; thence along said divide in a northerly direction to a point on said divide known as Big Rock Flat, where the waters flow into the Little Salmon; thence in a northeasterly direction on a low divide separating the waters of the Little Salmon and Payette Rivers to a point due east of the northern point of Little Salmon Meadows; thence west to the Little Salmon River; thence down the Little Salmon River to a point due east of the point where the section line between Sections 6 and 7, Township 22 North, Range 1 East B. M. intersects said meridian; thence due west to the middle of the main channel of Snake River; thence up said channel to the place of beginning, be and the same is hereby organized into the County of Washington, and the county seat of said county is hereby located at the town of Weiser.

Historical: County created by act approved Feb. 2, 1879, 10 Ter. Ses. 40. The above boundaries were derived from the following acts: Act to better define boundaries, Laws 1891, 41; act

to better define boundaries, Laws 1895, 21; act to better define boundaries, 1899, 22; also Laws 1899, 79; act to define boundaries, Laws 1905, 303.

CHAPTER 3.

LEGISLATIVE DISTRICTS.

Section

25. Apportionment of the Legislature.

Apportionment of the Legislature.

Sec. 25. The apportionment of the two houses of the Legislature is as follows:

The First Senatorial District consists of the County of Ada, and shall elect one Senator.

The Second Senatorial District consists of the County of Blaine, and shall elect one Senator.

The Third Senatorial District consists of the County of Bannock, and shall elect one Senator.

The Fourth Senatorial District consists of the County of Bear Lake, and shall elect one Senator.

The Fifth Senatorial District consists of the County of Bingham, and shall elect one Senator.

The Sixth Senatorial District consists of the County of Boise, and shall elect one Senator.

The Seventh Senatorial District consists of the County of Canyon, and shall elect one Senator.

The Eighth Senatorial District consists of the County of Cassia, and shall elect one Senator.

The Ninth Senatorial District consists of the County of Bonner, and shall elect one Senator.

The Tenth Senatorial District consists of the County of Custer, and shall elect one Senator.

The Eleventh Senatorial District consists of the County of Elmore, and shall elect one Senator.

The Twelfth Senatorial District consists of the County of Fremont, and shall elect one Senator.

The Thirteenth Senatorial District consists of the County of Idaho, and shall elect one Senator.

The Fourteenth Senatorial District consists of the County of Latah, and shall elect one Senator.

The Fifteenth Senatorial District consists of the County of Lemhi, and shall elect one Senator.

The Sixteenth Senatorial District consists of the County of Kootenai, and shall elect one Senator.

The Seventeenth Senatorial District consists of the County of Lincoln, and shall elect one Senator.

The Eighteenth Senatorial District consists of the County of Nez Perce, and shall elect one Senator.

The Nineteenth Senatorial District consists of the County of Oneida, and shall elect one Senator.

The Twentieth Senatorial District consists of the County of Owyhee, and shall elect one Senator.

The Twenty-first Senatorial District consists of the County of Shoshone, and shall elect one Senator.

The Twenty-second Senatorial District consists of the County of Washington, and shall elect one Senator.

The Twenty-third Senatorial District consists of the County of Twin Falls, and shall elect one Senator.

The several counties shall elect members of the House of Representatives as follows:

Ada County, five (5) members.

Bannock County, three (3) members.

Bear Lake County, two (2) members.

Bingham County, three (3) members.
 Blaine County, two (2) members.
 Boise County, one (1) member.
 Bonner County, two (2) members.
 Canyon County, three (3) members.
 Cassia County, one (1) member.
 Custer County, one (1) member.
 Elmore County, one (1) member.
 Fremont County, four (4) members.
 Idaho County, three (3) members.
 Kootenai County, three (3) members.
 Latah County, three (3) members.
 Lemhi County, one (1) member.
 Lincoln County, one (1) member.
 Nez Perce County, five (5) members.
 Oneida County, two (2) members.
 Owyhee County, one (1) member.
 Shoshone County, three (3) members.
 Twin Falls County, one (1) member.
 Washington County, two (2) members.

Any new county which may hereafter be created shall constitute a Senatorial District, and shall elect one Senator, and shall elect one Representative.

Historical: Laws 1905, 430, Sec. 1; amended Laws 1907, 472, Secs. 1, 2.

Cross Reference: Constitutional provision relating to apportionment; Const. Art. 3, Sec. 2. Senatorial or Representative district, when more than one county shall constitute the accorded representation to two counties created by an act subsequently declared to be unconstitutional, and omitted to provide representation for the counties from which the two created counties were organized, is unconstitutional. *Balentine v. Willey* (1893) 3 Ida. 496; 31 Pac. 994.

An apportionment act which contemplates that each county shall have one Senator and Representatives in proportion to population, is valid and constitutional, although an act pur-

porting to create certain counties for same, shall be composed of contiguous counties, and no county shall be divided in creating such districts. Const. Art 3, Sec. 5.

Construction of Prior Acts: Laws 1891, 195, which, in providing for the apportionment of the Legislature, the representation of which the apportionment act provides, is afterwards held unconstitutional, and in such case the apportionment act will be enforced according to its terms, except that one Senator will be accorded to the county from which the attempted new counties were created, and Representatives will be allowed to such county in proportion to its population. *Heitman v. Gooding* (1906) 12 Ida. 581; 86 Pac. 785.

CHAPTER 4.

JUDICIAL DISTRICTS.

Section

26. Judicial Districts defined.

Judicial Districts Defined.

Sec. 26. The State is divided into seven Judicial Districts, which are hereby defined as follows:

The First District comprises the Counties of Shoshone, Kootenai and Bonner;

The Second District comprises the Counties of Latah, Nez Perce and Idaho;

The Third District comprises the Counties of Ada and Boise;
The Fourth District comprises the Counties of Blaine, Lincoln, Cassia, Elmore and Twin Falls;
The Fifth District comprises the Counties of Bear Lake, Oneida and Bannock;
The Sixth District comprises the Counties of Fremont, Bingham, Lemhi and Custer; and
The Seventh District comprises the Counties of Canyon, Washington and Owyhee.

Historical: Const. Art. 5, Sec. 24, as modified by acts creating new counties and attaching them to judicial districts, and by Laws 1891, 189; (re-enacted Laws 1899, 127), re-	establishing the Fourth District; Laws 1903, 72, establishing the Sixth District, and Laws 1905, 6, establishing the Seventh District.
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CHAPTER 5.

CESSIONS TO THE FEDERAL GOVERNMENT AND ASSENTS TO ACTS OF CONGRESS.

Section	Section
27. Cession to the United States.	29. Establishment of agricultural experiment stations.
28. Consent to purchases by United States.	30. Same: Assent to increased appropriation.

Cession to the United States.

Sec. 27. Pursuant to Article 1, Section 8, Paragraph 17, of the Constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to all lands embraced within the military posts and reservations of Fort Sherman and Boise Barracks, together with such other lands in the State as may be now or hereafter acquired and held by the United States for military purposes, either as additions to the said posts or as new military posts or reservations which may be established for the common defense; and, also, all such lands within the State as may be included in the territory of the Yellowstone National Park, reserving, however, to this State a concurrent jurisdiction for the execution, upon said lands, or in the buildings erected thereon, of all process, civil or criminal, lawfully issued by the courts of the State, and not incompatible with this cession.

Historical: Laws 1899, 22, Sec. 1; re-enacting Laws 1890-91, 40, Sec. 1.

Consent to Purchases by United States.

Sec. 28. Consent is given to any purchase already made, or that may hereafter be made, by the Government of the United States, of any lots, or tracts of land, within this State, for the use of such government, and to erect thereon and use such buildings, or other improvements, as may be deemed necessary by said government; and over such lands and the buildings, or improvements, that are, or may be erected thereon, the said government shall have entire control and jurisdiction, except that the State shall have jurisdiction to execute thereon all process, civil or criminal, lawfully issued by the courts of this State, and not incompatible with this cession.

Historical: Laws 1899, 235, Sec. 1;
re-enacting Laws 1895, 21, Sec. 1.

Establishment of Agricultural Experimental Stations.

Sec. 29. The assent of the Legislature of the State of Idaho is hereby given to all the provisions of an act of Congress, approved July 2, 1862, entitled, "An Act Donating Public Lands to the Several States Which May Provide Colleges for the Benefit of Agriculture and the Mechanic Arts," and the acts amendatory thereof and supplementary thereto; and, also, an act approved March 2, 1887, entitled, "An Act to Establish Agricultural Experimental Stations in Connection With the Colleges Established in the Several States Under the Provisions of an Act Approved July 2, 1862, and the Acts Supplemental Thereto," and the acts amendatory thereof and supplementary thereto.

Historical: Laws 1899, 9, Sec. 1; re-enacting Laws 189-91, 16, Sec. 1.

Same: Assent to Increased Appropriation.

Sec. 30. The assent of the Legislature of the State of Idaho shall be, and the same is hereby, given to all the provisions of an act of Congress, approved June 16, 1906, entitled, "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditures Thereof." And the Legislature of the State of Idaho hereby approves of, and assents to, the purposes of the grants and appropriations provided for and made by said act of Congress, and hereby agrees to abide by the terms, conditions, requirements and limitations thereof.

Historical: Laws 1907, 22, Sec. 1.

TITLE 2

PUBLIC OFFICERS

Chapter

1. Classification and term of office.
2. Legislative officers.
3. Executive officers and Capitol Trustees.
4. Governor.
5. Secretary of State.
6. State Auditor.
7. State Treasurer.
8. Attorney General.
9. State Board of Examiners.
10. State Engineer.
11. Insurance Commissioner and Examiner.
12. Bank Commissioner.

Chapter

13. Fish and Game Warden.
14. Inspector of Mines.
15. Other executive officers and boards.
16. Officers of the Judicial Department.
17. Notaries Public.
18. Commissioners of Deeds.
19. General provisions applicable to all officers.
20. Bonds of officers.
21. Resignations and vacancies.
22. Miscellaneous provisions.

CHAPTER 1.

CLASSIFICATION AND TERM OF OFFICE.

Section

31. Classification of officers.
32. Commencement of term of office.

Section

- 32a. Holding office after expiration of term.

Classification of Officers.

Sec. 31. The public officers of this State are classified as follows:

1. Legislative;
2. Executive;
3. Judicial;
4. Ministerial officers and officers of the courts. But this classification is not to be construed as defining the legal powers of either class.

Historical: Rev. St. 1887, Sec. 110.

California Legislation: Same; Pol. Code 1872, Sec. 220; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Classification by Constitution: Art. 2, Sec. 1.

Commencement of Term of Office.

Sec. 32. The regular term of office of State and District officers, and of the Judges of the Supreme and District Courts, shall commence on the first Monday of January next after their election.

Historical: Laws 1899, 67, Sec. 1; re-enacting and amending Laws 1890-91, 57, Sec. 13.

Cross Reference: Commencement of term of State executive officers: Const. Art. 4, Sec. 1.

Holding Office After Expiration of Term.

Sec. 32a. Every officer elected or appointed for a fixed term shall

hold office until his successor is elected or appointed and qualified, unless the statute under which he is elected or appointed expressly declares the contrary. This section shall not be construed in any way to prevent the removal or suspension of such officer, during or after his term, in cases provided by law.

Historical: Laws 1899, 67, Sec. 5; re-enacting Laws 1890-91, 57, Sec. 172.

Duration of Office: The right of the incumbent to hold office until his

successor is elected and qualified is as much a part of the estate in the office as the original term. *People v. Green* (1869) 1 Ida. 235.

CHAPTER 2.

LEGISLATIVE OFFICERS.

Article

1. Constitution and assembly of Legislature.
2. Contested elections.
3. Attendance of witnesses before Legislature.

Article

4. Enactment of laws and journal.
5. Operation of laws.
6. Employees of the Legislature.

ARTICLE 1.

CONSTITUTION AND ASSEMBLY OF LEGISLATURE.

Section

33. Constitution of Legislature.
34. Terms of members.
35. Certificate of election.

Section

36. Organization of Legislature.
37. Who may administer oaths.

Note: Legislature to meet bi-ennially on the first Monday after the first day of January: Const. Art. 3, Sec. 8. Extra sessions to be called by Governor: Const. Art. 4, Sec. 9.

Constitution of Legislature.

Sec. 33. The Legislature consists of a Senate and House of Representatives, the members of which are elected from the respective senatorial and representative districts, as defined by Section 25 of this Code, by the qualified electors of said districts.

Historical: New section by Commissioner based on Rev. St. 1887, Sec. 115, and Const. Art. 3, Secs. 1 and 2.

Cross Reference: Investiture of legislative power: Const. Art. 3, Sec. 1.

Terms of Members.

Sec. 34. The Senators and Representatives shall be elected for the term of two years from and after the first day of December next following the general election.

Historical: Laws 1899, 67, Sec. 2; re-enacting and amending Laws 1890-91, 57, Sec. 14.

California Legislation: A Senator's term is four years: Pol. Code 1872, Sec. 226; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Constitutional provisions: Art. 3, Sec. 3. Qualifications of Senators and Representatives: Const. Art. 3, Sec. 6.

Certificate of Election.

Sec. 35. The certificate of election is prima facie evidence of the right to membership.

Historical: Rev. St. 1887, Sec. 121.

California Legislation: Same except "primary" for "prima facie": Pol. Code 1872, Sec. 236; now same as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Secretary of State to make out certificates of election: Sec. 455.. Secretary of State to lay before each house a list of members elected: Sec. 456:

Organization of Legislature.

Sec. 36. At the hour of twelve o'clock M., on the day appointed for the meeting of any regular session of the Legislature, the presiding officer, or in his absence the chief clerk, of each house of the last session, must call the same to order and preside until a presiding officer is chosen, or in case of the absence of both of said officers, the senior member present must perform said duties; all members-elect present having certificates of election from the Secretary of State, and no other persons, have the right to participate in the organization of the respective houses. Neither house must organize or transact any business, but must adjourn from day to day, until a majority of all the members authorized by law to be elected are present.

Historical: Rev. St. 1887, Sec. 122. "Clerk of the Board of County Commissioners" changed to "Secretary of State" to conform to Laws 1899, 33, Sec. 99.

provisions for Senate and Assembly: Pol. Code 1872, Secs. 238, 239; Deering's Code, ib.; Kerr's Code, ib.

Cited: (Dis. op.) Burkhardt v. Reed (1889) 2 Ida. 503; 22 Pac. 1.

California Legislation: Separate

Who May Administer Oaths.

Sec. 37. The President and President *pro tem*, of the Senate, and the Speaker and Speaker *pro tem*, of the House, may administer the oath of office to any member, and to the officers of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination.

Historical: Rev. St. 1887, Sec. 123.
California Legislation: Similar:

Pol. Code, 1872, Sec. 252; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 2.

CONTESTED ELECTIONS.

Section

39. Grounds of contest.
40. Incumbent defined.
41. Misconduct: When sufficient to vitiate election.
42. Jurisdiction: Contests over executive offices.
43. Same: Contest over legislative offices.
44. Notice of contest.
45. Service of notice: Examination of witnesses.
46. Subpoenas: Application for.
47. Same: How Issued.
48. Disobedience of subpoena: Penalty.

Section

49. Production of papers.
50. Witnesses' fees and mileage.
51. Testimony: How taken, certified and preserved.
52. Examination of poll books and ballots.
53. Fees of officers.
54. Contest papers delivered to presiding officers.
55. Same: Notice of receiving papers.
56. Opening and custody of papers.
57. Preservation of evidence.

Grounds of Contest.

Sec. 39. The election of any person to any legislative or State

1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board, sufficient to change the result;

2. When the incumbent was not eligible to the office at the time of the election;

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights;

4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or anything of value, for the purpose of procuring his election;

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

7. When the incumbent is in default as a collector and custodian of public money or property;

8. For any cause which shows that another person was legally elected.

Historical: Laws 1899, 33, Sec. 119; re-enacting Laws 1890-91, 57, Sec. 132. The first clause is rewritten by the Commissioner so as to confine the provisions of the section to the specific subject matter of this article. The section as originally enacted is found in the Code of Civil Procedure, Sec. 5026. It is duplicated in this place

in order to make this article complete. The section in its original form applies to all contests indiscriminately, thus including those under consideration in this article.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2. Sec. 5665.

Incumbent Defined.

Sec. 40. The term "incumbent" as used in the preceding section means the person whom the canvassers declare elected.

Historical: Laws 1899, 33, Sec. 120; re-enacting Laws 1890-91, 57, Sec. 133. This is a duplicate section and is in-

serted here for the reason stated in the note to the preceding section.

Misconduct: When Sufficient to Vitate Election.

Sec. 41. When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township or ward would change the result as to that office.

Historical: Laws 1899, 33, Sec. 121; re-enacting Laws 1890-91, 57, Sec. 134. This is a duplicate section and is in-

serted here for the reason stated in the note to Section 40.

Jurisdiction: Contests Over Executive Offices.

Sec. 42. The Legislature, in joint meeting, shall hear and determine cases of contested election for all officers of the executive department. The meeting of the two houses to decide upon such elections shall be held in the House of Representatives, and the Speaker of the House shall preside.

Historical: Laws 1899, 33, Sec. 122; re-enacting Laws 1890-91, 57, Sec. 135.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5668.

Cited: Hertle v. Ball (1903) 9 Ida. 193; 72 Pac. 953.

Same: Contests Over Legislative Offices.

Sec. 43. The Senate and House of Representatives shall severally hear and determine contests of the election of their respective members.

Historical: Laws 1899, 33, Sec. 123; re-enacting Laws 1890-91, 57, Sec. 136.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5670.

Cross Reference: Each house of

the Legislature is the judge of the election, qualifications, and returns of its members: Const. Art. 3, Sec. 9.

Cited: Hertle v. Ball (1903) 9 Ida. 193; 72 Pac. 953.

Notice of Contest.

Sec. 44. Whenever any elector of this State chooses to contest the validity of the election of any of the officers of the executive department of the State, or whenever any elector of the proper county or district chooses to contest the election of any member of the Legislature from such county or district, such person shall give notice thereof, in writing, and leave a copy thereof with the person whose election he intends to contest, within twenty days after the election (if the person cannot be found in his district, then a copy to be left at his last place of residence in the district), naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions.

Historical: Laws 1899, 33, Sec. 127; re-enacting Laws 1890-91, 57, Sec. 140.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5674.

Service of Notice: Examination of Witnesses.

Sec. 45. The notice provided for in the preceding section shall be served at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed, to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony shall have been taken and reduced to writing: *Provided*, That such testimony shall be finally closed on or before the 29th of December following.

Historical: Laws 1899, 33, Sec. 128; re-enacting Laws 1890-91, 57, Sec. 141.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5675.

Subpoenas: Application For.

Sec. 46. When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to any District Judge of the State, or to the probate judge,

or any justice of the peace, notary public, mayor, recorder, or other civil officer authorized to administer oaths within the county where the witness resides or may be found.

Historical: Rev. St. 1887, Sec. 131. 11 Ter. Ses. (1881) 257, Sec. 13. This section and the four following sections are perhaps technically repealed by Laws 1899, 33, Sec. 162, but

are preserved out of necessity to make this article effective.

California Legislation: See Pol. Code 1872, Sec. 277; Deering's Code, ib.; Kerr's Code, ib.

Same: How Issued.

Sec. 47. The officer to whom the application authorized by the preceding section is made, must thereupon issue his writ of subpoena, directed to all such witnesses as are named to him, requiring their attendance before the officer named in the notice, at some time and place named in the subpoena, in order to be examined respecting the contested election.

Historical: Rev. St. 1887, Sec. 132. 11 Ter. Ses. (1881) 257, Sec. 14.

California Legislation: See references following Section 46, ante.

Disobedience of Subpoena: Penalty.

Sec. 48. Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, and is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 134. See 11 Ter. Ses. (1881) 257, Sec. 16.

Production of Papers.

Sec. 49. The officers have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 137. See 11 Ter. Ses. (1881) 257, Sec. 19.

California Legislation: See references following Section 46, ante.

Witnesses' Fees and Mileage.

Sec. 50. Every witness attending by virtue of any subpoena here-in directed to be issued is entitled to receive the sum of two dollars for each day's attendance, and the further sum of twenty-five cents for every mile necessarily traveled in going and returning. Such allowance must be ascertained and certified by the officer taking the examination, and paid by the party at whose instance such witness was summoned.

Historical: Rev. St. 1887, Sec. 138. 11 Ter. Ses. (1881) 257, Sec. 20.

Testimony: How Taken, Certified and Preserved.

Sec. 51. No testimony shall be received by the person officiating at the taking of the depositions on the part of the contestant which

does not relate to the points specified in the notice, a copy of which notice shall be delivered to the person or persons so officiating, and said testimony, together with a copy of the notice, when taken, shall be certified by the person or persons before whom the same is taken, enveloped, sealed up, indorsed "Deposition taken in the matter of the contest of the election of A. B. to the office of," and directed to the Secretary of State, who shall preserve the same, unopened, till the meeting of the Legislature.

Historical: Laws 1899, 33, Sec. 129; re-enacting Laws 1890-91, 57, Sec. 142.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 1, Sec. 5676.

Examination of Poll Books and Ballots.

Sec. 52. If, at the time of taking depositions to be used before the Legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts, should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county auditor, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions, as provided in the preceding section.

Historical: Laws 1899, 33, Sec. 130; re-enacting Laws 1890-91, 57, Sec. 143.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5677.

Fees of Officers.

Sec. 53. Officers performing services, in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases.

Historical: Rev. St. 1887, Sec. 139. See 11 Ter. Ses. (1881) 257, Sec. 21. This section is possibly repealed by the act referred to in the note to Section 46, but is preserved for the reasons there stated.

California Legislation: Same: Pol. Code 1872, Sec. 280; Deering's Code, ib.; Kerr's Code, ib.

Contest Papers Delivered to Presiding Officers.

Sec. 54. On the second day of the organization of the Legislature, the Secretary of State shall deliver to the Speaker of the House all papers relating to the contested elections of executive officers, and to the presiding officers of each house, all papers relating to contested elections of the members of their respective houses.

Historical: Laws 1899, 33, Sec. 131; re-enacting Laws 1890-91, 57, Sec. 144.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5678.

Same: Notice of Receiving Papers.

Sec. 55. Upon the reception, by such presiding officers, of papers relating to contested elections, they shall immediately give notice to

their respective houses that such papers are in their possession. Where the papers relate to the contest of a State executive officer, the House of Representatives shall notify the Senate, and a day shall be fixed by both houses, by concurrent resolution, for the uniting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

Historical: Laws 1899, 33, Sec. 132; re-enacting Laws 1890-91, 57, Sec. 145.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5679.

Opening and Custody of Papers.

Sec. 56. The papers relating to any such contest shall be opened only in the presence of the body by the presiding officer, to whom the same shall be delivered. If ballots or poll books are contained therein, they shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope, and returned by mail or otherwise to the office of the county auditor in which they were first required to be filed.

Historical: Laws 1899, 33, Sec. 133; re-enacting Laws 1890-91, 57, Sec. 146.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5680.

Preservation of Evidence.

Sec. 57. All the evidence in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the Secretary of State.

Historical: Laws 1899, 33, Sec. 134; re-enacting Laws 1890-91, 57, Sec. 147.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 5681.

ARTICLE 3.

ATTENDANCE OF WITNESSES BEFORE LEGISLATURE.

Section

- 58. Subpoenas for witnesses.
- 59. Service of subpoena.
- 60. Refusal to obey subpoena a contempt.

Section

- 61. Compelling attendance.
- 62. Self-criminating testimony may be exacted.

Subpoena for Witnesses.

Sec. 58. A subpoena requiring the attendance of any witness before either house of the Legislature, or a committee thereof, may be issued by the President of the Senate, Speaker of the House, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the Senate or House, or a committee;
2. It is addressed to the witness;
3. It requires the attendance of such witnesses at a time and place certain;
4. It is signed by the President of the Senate, Speaker of the House, or chairman of a committee.

Historical: Rev. St. 1887, Sec. 145.
California Legislation: Same: Pol.

Code 1872, Sec. 300; Deering's Code,
ib.; Kerr's Code, ib.

Service of Subpoenas.

Sec. 59. The subpoena may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness is evidence of service.

Historical: Rev. St. 1887, Sec. 146.
California Legislation: Same: Pol.

Code 1872, Sec. 301; Deering's Code,
ib.; Kerr's Code, ib.

Refusal to Obey Subpoena a Contempt.

Sec. 60. If any witness neglects or refuses to obey such subpoena, or appearing, refuses to testify, the Senate or House may, by resolution entered on the journal, commit him for contempt.

Historical: Rev. St. 1887, Sec. 147.
California Legislation: Similar Pol.
Code 1872, Sec. 302; Deering's Code,
ib.; Kerr's Code, ib.

Cross Reference: Neglect of witness
to obey subpoena is a misdemeanor:
Sec. 6414.

Compelling Attendance.

Sec. 61. Any witness neglecting or refusing to attend in obedience to subpoena, may be arrested by the sergeant-at-arms, and brought before the Senate or House. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the Senate or House, signed by the presiding officer, and countersigned by the clerk.

Historical: Rev. St. 1887, Sec. 148.
California Legislation: Similar Pol.

Code 1872, Sec. 303; Deering's Code,
ib.; Kerr's Code, ib.

Self-Criminating Testimony May Be Exacted.

Sec. 62. No statement made by any such witness on such examination before either house, or a committee, is competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper, touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him, or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

Historical: Rev. St. 1887, Sec. 149.
California Legislation: Similar: Pol.

Code 1872, Sec. 304; Deering's Code,
ib.; Kerr's Code, ib.

ARTICLE 4.

ENACTMENT OF LAWS AND JOURNAL.

Section	Section
63. Indorsement of bills.	67. Bills not returned.
64. Approval of bills.	68. Proposal of constitutional amend- ments.
65. Passage of bills over veto; Au- thentication.	69. Enrollment and preservation of amendments.
66. Return of bill during adjourn- ment.	70. Printing of legislative journals.

Note: Constitutional provisions governing the enactment of laws: Const. Art. 3, Secs. 14-22.

Indorsement of Bills.

Sec. 63. Every bill must, as soon as delivered to the Governor, be indorsed as follows: "This bill was received by the Governor this — day of —, nineteen —."

Historical: Rev. St. 1887, Sec. 150.

California Legislation: Same with the addition of the words, "The indorsement must be signed by the Pri-

vate Secretary of the Governor"; Pol. Code 1872, Sec. 309; Deering's Code, ib.; Kerr's Code, ib.

Approval of Bills.

Sec. 64. When the Governor approves a bill he must set his name thereto, with the date of his approval.

Historical: Rev. St. 1887, Sec. 151.

California Legislation: Same: Pol.

Code 1872, Sec. 310, as amended; Deering's Code ib.; Kerr's Code, ib.

Passage of Bills Over Veto: Authentication.

Sec. 65. When a bill has passed both houses of the Legislature, and is returned by the Governor without his signature and with objections thereto, and upon a reconsideration passes both houses by a two-thirds vote, it must be authenticated as having become a law by a certificate indorsed thereon, or attached thereto, in the following form:

"This bill having been returned by the Governor with his objections thereto, and after reconsideration having passed both houses, by a two-thirds vote, it has become a law this — day of —, A. D. —," which indorsement, signed by the President of the Senate and Speaker of the House, is a sufficient authentication thereof. Such bill must then be deposited with the laws, in the office of the Secretary of State.

Historical: Rev. St. 1887, Sec. 152.

California Legislation: See Pol. Code 1872, Sec. 311; as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Veto power of Governor: Const. Art. 4, Sec. 10. Disapproval of appropriation bills: Const. Art. 4, Sec. 11.

Return of Bill During Adjournment.

Sec. 66. If, on the day the Governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the Governor, on the first day the house is again in session, by message notifies it of such delivery, and of the time when, and the person to whom, such delivery was made.

Historical: Rev. St. 1887, Sec. 153.

California Legislation: Similar: Pol.

Code 1872, Sec. 312; Deering's Code, ib.; Kerr's Code, ib.

Bills Not Returned.

Sec. 67. Every bill which has passed both houses of the Legislature, and has not been returned by the Governor within five days, thereby becoming a law, is authenticated by the Governor causing the fact to be certified thereon by the Secretary of State in the

following form: "This bill having remained with the Governor five days (Sundays excepted), and the Legislature being in session, it has become a law this — day of —, A. D. —," which certificate must be signed by the Secretary of State and deposited with the laws in his office. Where the Legislature, by adjournment, prevents the return of a bill, the Governor, if he disapproves thereof, shall file the same, with his objections, in the office of the Secretary of State within ten days after said adjournment (Sundays excepted) or the same shall become a law.

Historical: Rev. St. 1887, Sec. 154. "Three" days changed to "five" days to comply with Const. Art. 4, Sec. 10. The last sentence is added by the Commissioner on the authority of the same section of the Constitution.

California Legislation: First part same except "ten days" for "five days": Pol. Code 1872, Sec. 313; Deering's Code, ib.; Kerr's Code, ib.

Proposal of Constitutional Amendments.

Sec. 68. Amendments to the Constitution may be proposed by joint resolution in either house of the Legislature of this State, and if the same shall be voted for by two-thirds of all the members of each of the two houses, voting separately, in the manner provided by Section 1, of Article 20, of the Constitution, the amendment or amendments proposed shall be submitted to the electors of this State for adoption or rejection in the manner provided by the election laws of the State.

Historical: Laws 1899, 162, Sec. 1; re-enacting Laws 1890-91, 229, Sec. 1.
Cross Reference: Advertisement of

proposed constitutional amendments: Sec. 356. Form of ballot: Sec. 405.

Enrollment and Preservation of Amendments.

Sec. 69. Whenever any amendments to the Constitution shall have been proposed to and adopted by the electors of this State, as by this and the preceding sections provided, the same shall be enrolled and numbered in the order of time in which they may be adopted, and preserved by the Secretary of State among the public records of his office.

Historical: Laws 1899, 162, Sec. 2; re-enacting Laws 1890-91, 229, Sec. 2.

Printing of Legislative Journals.

Sec. 70. Before the assembling of each session of the Legislature, the Secretary of State shall provide, in the same manner as for other public printing, for the printing of the journals of the two houses of the Legislature. They shall be printed in super royal octavo form, in neat eight-point type, with at least two thousand four hundred ems in a page, without any unnecessary leads, blank or broken lines or pages. Three hundred and fifty copies of the said journals shall be printed daily during the sessions of the Legislature in the same form as herein provided; said copies to be bound in pamphlet form without covers, and the portions of the journal of the Senate shall precede the portions of the journal of the House of Representatives in the pamphlets. Said pamphlets shall be placed daily, one on the desk of each Senator and member of the House of Representatives,

and one to each head of a department of the State government; and of those remaining, one-third shall be distributed by the members of the Senate, under the direction of the secretary of the Senate, and two-thirds shall be distributed by the members of the House of Representatives under the direction of the clerk of the House: *Provided*, That as rapidly as possible the usual number of sheets, not exceeding two hundred and fifty, for the bound and permanent copies of the said journals, shall be printed and retained for binding at such times as the indexes therefor are prepared and printed.

Historical: Laws 1907, 327, Sec. 1. Omitting the clause relating to the session of 1909, the purposes of which	will have been accomplished at the time of the submission of these Codes to the Legislature.
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ARTICLE 5.

OPERATION OF LAWS.

Section	Section
71. Statutes and resolutions: When effective.	73. Repeal of repealing act.
72. Effect of amendment.	74. Repeal of penal law.

Statutes and Resolutions: When Effective.

Sec. 71. No act shall take effect until sixty days from the end of the session at which the same shall have been passed except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

Historical: Rev. St. 1887, Secs. 155, 156. The former section is rewritten by the Commissioner to conform to Const. Art. 3, Sec. 22.	sixty days from passage: Pol. Code 1872, Secs. 323, 324; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same as to joint resolutions. Statutes take effect	Cross Reference: Constitutional provision: Const. Art. 3, Sec. 22.

Effect of Amendment.

Sec. 72. Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

Historical: Rev. St. 1887, Sec. 157.	Code 1872, Sec. 325; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same: Pol.	

Repeal of Repealing Act.

Sec. 73. No act or part of an act, repealed by another act of the Legislature, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

Historical: Rev. St. 1887, Sec. 158. 8 Ter. Ses. (1875) 858, Sec. 1.	Code 1872, Sec. 328; Deering's Code, ib.; Kerr's Code, ib.
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Repeal of Penal Law.

Sec. 74. The repeal of any law creating a criminal offense does

not constitute a bar to the indictment and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment and punishment is expressly declared in the repealing act.

Historical: Rev. St. 1887, Sec. 159. Sec. 8 Ter. Ses. (1875) 858, Sec. 2.

California Legislation: Same: Pol. Code 1872, Sec. 329; as amended: Deering's Code, ib.; Kerr's Code, ib.

Construction: This section is a general saving clause to insure the punishment of offenders, and pre-

serves in force, in order to attain that end, statutes providing for the punishment of offenders, which are amended in such a way as to change or increase the punishment and which would otherwise be subject to objection as ex post facto laws. In re Davis (1899) 6 Ida. 766; 59 Pac. 544.

ARTICLE 6.

EMPLOYEES OF THE LEGISLATURE.

Section	Section
75. Employees of Senate.	81. Assistants to aid in copying bills.
76. Employees of the House.	82. Removal of officers and employees.
77. Compensation of employees.	83. Additional officers and employees.
78. Duties of employees.	84. Salary begins when.
79. Delivery of bills and papers to Secretary of State.	
80. Election of officers and employees.	

Employees of Senate.

Sec. 75. The officers and employees of the Senate shall consist of one secretary, one assistant secretary, one engrossing clerk, one assistant engrossing clerk, one enrolling clerk, one assistant enrolling clerk, one journal clerk, one chaplain, one sergeant-at-arms, one committee clerk, two pages, one doorkeeper and one janitor.

Historical: Laws 1899, 3, Sec. 1; re-enacting Laws 1890-91, 5, Sec. 1.

California Legislation: See Pol.

Code 1872, Sec. 245; similar as amended: Deering's Code, ib.; see Kerr's Code, ib.

Employees of the House.

Sec. 76. The officers and employees of the House of Representatives shall consist of one chief clerk, one assistant clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one chaplain, one sergeant-at-arms, one doorkeeper, two pages, one committee clerk and one janitor.

Historical: Laws 1899, 3, Sec. 2; re-enacting laws 1890-91, 5, Sec. 2.

California Legislation: See Pol.

Code 1872, Sec. 246; as amended; Deering's Code, ib.; further amended; Kerr's Code, ib.

Compensation of Employees.

Sec. 77. There shall be paid to the several officers and employees named in this article, for all services rendered by them under the provisions of this article, the following sums, and no more:

The secretary of the Senate, seven dollars per day.

The assistant secretary of the Senate, six dollars per day.

The chief clerk of the House, seven dollars per day.

The assistant chief clerk of the House, six dollars per day.

All other clerks of the two houses shall receive five dollars per day.

The sergeant-at-arms of the Senate and the Sergeant-at-arms of the House, each, six dollars per day.

The doorkeepers of the Senate and House, each, five dollars per day.

The messengers, each, three dollars per day.

The pages, each, three dollars per day.

The janitors, each, four dollars per day.

The journal clerks, each, five dollars per day.

The chaplains, each, two dollars per day.

Historical: Laws 1899, 3, Sec. 3;
re-enacting Laws 1890-91, 4, Sec. 3.

California Legislation: See Pol.

Code 1872, Sec. 268; as amended:
Deering's Code, ib.; further amended:
Kerr's Code, ib.

Duties of Employees.

Sec. 78. It shall be the duty of the secretary of the Senate to attend each day, call the roll, read the journals and bills, and to copy or take charge of and superintend all copying necessary to be done for the Senate.

It shall be the duty of the chief clerk of the House to attend each day, to call the roll, read the journal and bills, and to copy or take charge of and superintend all copying necessary to be done for the House.

It shall be the duty of the assistant secretary of the Senate and the assistant clerk of the House to take charge of all bills, petitions and other papers presented to their respective houses, to file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the secretary of the Senate and chief clerk of the House.

It shall furthermore be the duty of the secretary of the Senate and chief clerk of the House, to keep a correct record of the proceedings of each day, for the purpose of having such proceedings entered in the journal by the journal clerks of their respective houses.

It shall be the duty of the journal clerk of the Senate to record each day's proceedings in the journal, from which they shall be read by the secretary each day of meeting, in order that they may be authenticated by the signature of the President.

It shall be the duty of the journal clerk of the House to perform all similar duties for the House which are required to be performed by the journal clerk of the Senate.

It shall be the duty of the sergeant-at-arms of the Senate and the sergeant-at-arms of the House to give a general supervision, under the direction of the presiding officers, of the Senate and House chambers, with the rooms attached; to attend during the sittings of their respective bodies, execute their commands, together with all such proceedings issued by authority thereof, as shall be directed to them by their presiding officers. They shall receive no other compensation for their services beyond their per diem, except actual expenses incurred in arrests made by them, and for traveling expenses for themselves or special messenger, which expenses so incurred shall be paid from the contingent fund of their respective houses: *Provided*, That no messenger shall be employed by any officer of either house unless expressly authorized so to do by the house of which he is an officer.

They shall have power to appoint a deputy each on a vote of their respective houses. It shall be the duty of the deputy sergeant-at-arms of each house to assist the sergeant-at-arms in the performance of his duties.

It shall be the duty of the doorkeeper of each house to prohibit all persons, except members of the Legislature and State officers, employees and reporters and persons who may, on invitation, be entitled to seats, from entering within the bar of the house of which he is doorkeeper, unless upon invitation, and to arrest for contempt all persons outside of the bar or in the gallery found engaged in loud conversation, or otherwise making a noise, to the disturbance of their respective houses.

It shall be the duty of the janitors to keep the furniture of their respective houses in good order, to clean and light lamps and perform such other duties as they may be directed to do, by the President of the Senate or the Speaker of the House.

It shall be the duty of the chaplains to open the proceedings in their respective houses with prayer.

Historical: Laws 1899, 3, Sec. 4;
re-enacting Laws 1890-91, 4, Sec. 4.

California Legislation: Similar: Pol.

Code 1872, Secs. 253-260, inclusive;
Deering's Code, ib.; as amended:
Kerr's Code, ib.

Delivery of Bills and Papers to Secretary of State.

Sec. 79. It shall be the duty of the secretary of the Senate and chief clerk of the House, at the close of each session of the Legislature, to mark, label and arrange all bills and papers belonging to the archives of their respective houses, and to deliver the same, together with all the books of both houses, to the Secretary of State, who shall certify to the reception of the same; and upon the production of said certificate to the State Auditor, the Auditor is authorized and directed to draw his warrant upon the Treasurer in favor of the above named parties for the sum of twenty-five dollars each, and the Treasurer is authorized to pay the same out of any money in the general fund not otherwise appropriated.

Historical: Laws 1899, 3, Sec. 5;
re-enacting Laws 1890-91, 4, Sec. 5.

California Legislation: Similar though "same," line 6: Pol. Code 1872, Sec. 261; Deering's Code, ib.; Kerr's Code, ib.

Review of Clerk's Acts: It is the duty of the clerk to make up such records as he deems proper to be de-

livered to the Secretary and to deliver the same. If he has done this, it will be presumed that he has done it correctly, and the Supreme Court will not entertain, by mandamus proceedings, the question whether the papers so delivered to the Secretary are correct or not. *Burkhart v. Reed* (1889) 2 Ida. 503; 22 Pac. 1.

Election of Officers and Employees.

Sec. 80. All officers and employees of the Senate and House provided for in this article shall be elected by the Senate and House, respectively.

Historical: Laws 1899, 3, Sec. 6;
re-enacting Laws 1890-91, 4, Sec. 6.

California Legislation: Similar: Pol.

Code 1872, Sec. 247; additional provision as amended: Deering's Code, ib.; Kerr's Code, ib.

Assistants to Aid in Copying Bills.

Sec. 81. The President of the Senate and the Speaker of the House

may direct the assistant enrolling clerk and the assistant engrossing clerk to aid in copying bills, messages or other lengthy documents, when they are not otherwise employed.

Historical: Laws 1899, 3, Sec. 7;
re-enacting Laws 1890-91, 4, Sec. 7.

Removal of Officers and Employees.

Sec. 82. Any of the officers and employees mentioned in this article may be removed by a two-thirds vote of the members of the house in which they are connected for failure to perform the duties imposed upon them by this article, or for incompetency, or for conduct which shall by each house be deemed improper.

Historical: Laws 1899, 3, Sec. 8;
re-enacting Laws 1890-91, 4, Sec. 8.

Additional Officers and Employees.

Sec. 83. No additional number of officers or employees of the Senate or House shall be elected or appointed unless on a two-thirds vote.

Historical: Laws 1899, 3, Sec. 9;
re-enacting Laws 1890-91, 4, Sec. 9.

Salary Begins When.

Sec. 84. The per diem of all officers fixed by this article shall date from the day on which they shall have been elected and qualified.

Historical: Laws 1899, 3, Sec. 10;
re-enacting Laws 1890-91, 4, Sec. 10.

CHAPTER 3.

EXECUTIVE OFFICERS AND CAPITOL TRUSTEES.

Section	Section
85. State executive officers enumerated.	87. Same: Duties of Board.
86. Board of Trustees of Capitol building.	88. Same: Appointment of janitor.
	89. Same: Nightwatchman.

State Executive Officers Enumerated.

Sec. 85. The executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction.

Historical: New section by Commissioner compiled from Const. Art. 4, Sec. 1. See also Rev. St. 1887, Sec. 170.

California Legislation: See Pol. Code 1872, Sec. 343; as amended: Deering's Code, ib.; Kerr's Code, ib.

Board of Trustees of Capitol Building.

Sec. 86. The Governor, Secretary of State and State Treasurer shall constitute a Board of Trustees for the custody and maintenance of the Capitol building and grounds.

Historical: Rev. St. 1887, Sec. 172, amended Laws 1899, 6, Sec. 1; re-enacting Laws 1890-91, 10, Sec. 1.

Same: Duties of Board.

Sec. 87. Said Board of Trustees have control of the Capitol build-

ing and grounds with authority to receive, collect and receipt for all rents for the use of such parts of the building as may be rented by the State, and fix the amount of such rents, and execute all necessary leases and agreements. All rents so received must be paid into the Capitol building fund as provided by Section 38 of the Special and Local Laws. All bills for fuel, lights and water furnished for, and for necessary repairs to, the Capitol building must, when approved and certified by the Trustees, be audited by the Board of Examiners, and warrants issued therefor, which must be paid by the Treasurer out of moneys appropriated therefor; but the Trustees must not make or erect permanent improvements without special authority of the Legislature. They must keep the Capitol building insured for not less than fifty thousand dollars, in good responsible companies, that have complied with all of the laws of the State relating to fire insurance companies, and the premiums for such insurance must be audited and paid as aforesaid.

Historical: Rev. St. 1887, Sec. 173, amended act 15th Ter. Ses. (Laws 1888-89), 14, Sec. 1. Omitting the clause in relation to expenses, "not exceeding in amount the sum of twelve hundred dollars for any one calendar year," and changing "not otherwise appropriated" to "appropriated therefor" to conform to Const. Art. 7, Sec.

13, which requires specific appropriations. The words "Board of Examiners" are substituted for "Auditor" to conform to Const. Art. 4, Sec. 18. Also omitting clause relative to insurance of State Library, which is superseded by Laws 1899, 134, Sec. 6 (Code, Sec. 838).

Same: Appointment of Janitor.

Sec. 88. The Trustees shall have power to appoint a competent person for janitor, at a salary not exceeding seventy-five dollars per month; the janitor to have direct supervision over the whole building; take care of all the offices, halls and rooms, except legislative halls and Supreme Court chambers during sessions; and shall attend to the warming of the building.

Historical: Rev. St. 1887, Sec. 175. Omitting last line, "after adjournment

of the Legislature, commencing third quarter of 1888."

Same: Night Watchman.

Sec. 89. The Trustees are empowered to employ a competent person as night watchman, at a salary not exceeding sixty dollars per month; the night watchman shall take charge of the building at 8 o'clock P. M. and remain in or around the building until 6 o'clock a. m. It shall be his duty to watch and guard the premises during the night; to visit every office or room occupied during the day, at frequent intervals, and, when necessary, to attend to the steam heater during the night.

Historical: Rev. St. 1887, Sec. 176. Act Feb. 9, 1887.

CHAPTER 4.

GOVERNOR.

Section	Section
90. Duties of Governor.	92. Records of Governor's office.
91. Transmission of list of appointments.	93. Acting Governor to perform the same duties.

Duties of Governor.

Sec. 90. In addition to those prescribed by the Constitution, the Governor has the powers, and may perform the duties, prescribed in this and the following sections:

1. To supervise the official conduct of all executive and ministerial officers.

2. To see that all offices are filled, and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the Legislature therewith at its next session.

3. To make the appointments and supply the vacancies provided by law.

4. He is the sole official organ of communication between the government of this State and the government of any other State or Territory, or of the United States.

5. Whenever any suit or legal proceeding is pending in this State, or which may affect the title of this State to any property, or which may result in any claim against the State, he may direct the Attorney General to appear on behalf of the State.

6. He may require the Attorney General or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this State.

7. He may require the Attorney General to aid any prosecuting attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the State Treasury, for the apprehension of any convict who has escaped from the State Prison, or of any person who has committed, or is charged with the commission of, an offense punishable with death; and also offer like rewards, not exceeding five hundred dollars, each, in cases of felony, where the offense is not punishable with death.

9. To perform such duties respecting fugitives from justice as are prescribed by the Penal Code.

10. To issue and transmit election proclamations as prescribed by law.

11. He may require any officer to make special reports to him in writing on demand.

12. He has such other powers and may perform such other duties as are devolved upon him by any law of this State.

Historical: Rev. St. 1887, Sec. 180, amended Laws 1899, 135, Sec. 1; re-enacting Laws 1890-91, 198, Sec. 1.

California Legislation: Similar with additional provisions: Pol. Code 1872, Sec. 380; Deering's Code, *ib.*; Kerr's Code, *ib.*

Cross Reference: Constitutional provisions: Term of office, and residence at the seat of government: Art. 4, Sec. 1. Election: Art. 4, Sec. 2. Qualifications: Art. 4, Sec. 3. Is commander in chief of militia: Art. 4, Sec. 4. Supreme executive power vested in: Art. 4, Sec. 5. To nominate

and appoint certain officers and to fill vacancies: Art. 4, Sec. 6. Is a member of Board of Pardons: Art. 4, Sec. 7. May grant respites or reprieves: Art. 4, Sec. 7. May require information from officers and from managers of institutions, and transmit messages to Legislature: Art. 4, Sec. 8. May convene Legislature in special session: Art. 4, Sec. 9. To approve or veto bills passed by Legislature: Art. 4, Sec. 10. Same: Appropriation bills: Art. 4, Sec. 11. Is member of Board of State Prison Commissioners: Art. 4, Sec. 18. Also of Board of Examiners: *ib.* Also of State Board of Equaliza-

tion: Art. 7, Sec. 12. Also of Board of Land Commissioners: Art. 9, Sec. 7. To appoint Commissioner of Immigration, Labor and Statistics: Art. 13, Sec. 1. To commission militia officers: Art. 14, Sec. 3.

Salary: Sec. 274.

Member of Boards: Of State Board of Canvassers: Sec. 450; of State Board of Equalization: Sec. 1702; of State Land Board: Sec. 1558; of State Military Board: Sec. 709; of State Highway Commission: Sec. 1061; of Board of Trustees of Industrial Training School: Sec. 806; of Board of Capitol Building Trustees: Sec. 86. Chairman of Board of Examiners: Sec. 144. Chairman of Board of Prison Commissioners: Sec. 8461. President of Board of Pardons: Sec. 8249. Chairman of Trustees of the Soldiers' Home: Sec. 794.

Appointment of officers: State Engineer: Sec. 149; Insurance Commissioner: Sec. 161; Commissioners of Deeds: Sec. 243; Notaries: Sec. 231; Fish and Game Warden: Sec. 195; Bank Commissioner: Sec. 189; State Veterinary Surgeon: Sec. 1158; Same: May remove appointee for cause: Sec. 1159; member of Board of Dairy, Food and Oil Commissioners: Sec. 1114; military staff officers: Sec. 685; Labor Commission: Sec. 1427; Commissioner of Immigration, Labor and Statistics: Sec. 1418; Directors of Insane Asylum: Sec. 752; Directors of North Idaho Insane Asylum, Sec. 786; Trustees of Industrial Training School: Sec. 806; State Board of Health: Sec. 1080; Trustees of Historical Society: Sec. 848; Livestock Sanitary Board: Sec. 1153; Trustees of Albion Normal School: Sec. 517; Trustees of Academy of Idaho: Sec. 546; Regents of University: Sec. 486; Trustees of Lewiston Normal School: Sec. 501; Lumber Inspectors: Sec. 1495; State Grain Commission: Sec. 1478; Board of Examining Surveyors: Sec. 1401; Board of Horticultural Inspection: Sec. 1310; Board of Medical Examiners: Sec. 1341; State Board of Dental Examiners: Sec. 1357; Osteopathic Board: Sec. 1366; Examiners in Optometry: Sec. 1374; Board of Pharmacy: Sec. 1385.

Is commander in chief of the militia: Sec. 684. To Commission Quartermaster of militia: Sec. 710. To commission regimental staff officers: Sec. 690. Same: Other officers: Sec. 695. To have printed and distributed copies of the National Guard law: Sec. 748. May loan stands of arms and equipments to Grand Army posts: Sec. 750. To approve discharge of militia officers: Sec. 705. May call out militia to suppress invasion or insurrection: Sec. 739. Reinstatement of members of militia after dishonorable discharge: Sec. 719.

Duties in relation to deposit of State funds: Secs. 127, 129, 131, 136. May examine State Treasury: Sec. 138.

Suspension and removal of State Treasurer for default reported by State Examiner: Sec. 187.

Indorsement of bills: Sec. 63. Approval of bills: Sec. 64. Veto of bills: Secs. 65, 66. Authentication of bills: Sec. 67. Filing bills disapproved after adjournment of Legislature: Sec. 67. Transmission to Legislature of reports of Commissioner: Sec. 169.

To issue election proclamations: Sec. 353. To sign certificates of Presidential Electors: Sec. 459. To decide ties in elections to fill vacancies in Presidential Electors and to notify persons elected to fill such vacancies: Secs. 463, 464.

To commission officers: Sec. 265.

To approve bonds of State officers: Sec. 283.

To take possession of State offices in case of vacancies: Sec. 330.

To fill vacancies in State offices: Sec. 320. Same: In board of county commissioners: Sec. 321. To call election to fill vacancy in Legislature: Sec. 325. Same: In office of Representative in Congress: Sec. 326. To fill vacancies caused by the temporary absence of State officers: Sec. 332.

May require advice and impose duties on State Engineer: Sec. 160.

May inspect Soldiers' Home: Sec. 797.

To pass on estimate of supplies for State institutions: Sec. 865.

To take action on the report of the State Examiner: Sec. 177.

To proclaim quarantine of infected livestock: Sec. 1160. May issue proclamation prohibiting importation of livestock: Sec. 1184. To procure co-operation of Bureau of Animal Industry in eradicating contagious diseases of livestock: Sec. 1206.

Appeal to Governor and Attorney General from action of State Board of Pharmacy in granting or revoking a druggist's license: Sec. 1393.

To inquire into the fitness of institutions receiving delinquent children. Sec. 8334.

May require opinion of Justices of Supreme Court or Attorney General on statement of Judge in capital cases: Sec. 8011. May restore to citizenship any person who has served a term of imprisonment in the Penitentiary: Sec. 8257. Offer reward for apprehension of fugitive from justice: Sec. 8415. To issue warrant for discharge of convict on expiration of term: Sec. 8507. May order removal of prisoner from one county jail to another: Sec. 8546. Issuance of warrant for execution [of judgment in capital case when sentence has been suspended pending inquiry into sanity: Sec. 8016; same, in case of pregnancy: Sec. 8018.

Transmission of List of Appointments.

Sec. 91. Within ten days after the meeting of the Legislature the Governor must transmit to it a list of all the appointments made by him and not before communicated.

Historical	Rev. St. 1887, Sec. 181.	Code 1872, Sec. 381; Deering's Code,
California	Legislation: See Pol.	ib.; Kerr's Code, ib.

Records of Governor's Office.

Sec. 92. The Governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.
2. A register of statements in capital cases made to him, with his action thereon.
3. An account of all his disbursements of State moneys, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.
4. A register of all appointments made by him, with date of commission, names of appointee and predecessor.
5. A record of all persons confined in the State Prison, showing the name of the convict, his age and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires.

Historical:	Rev. St. 1887, Sec. 182.	pardon and proceedings thereon: Sec. 8248 et seq. Statements in capital cases: Sec. 8010. Offering rewards for fugitives: Sec. 8415.
California	Legislation: Similar: Pol. Code 1872, Sec. 382; Deering's Code, ib.; Kerr's Code, ib.	

Cross Reference: Applications for

Acting Governor to Perform the Same Duties.

Sec. 93. Every provision in the laws of this State in relation to the powers and duties of the Governor and in relation to acts and duties to be performed by others towards him, extends to the person performing for the time being the duties of Governor.

Historical:	Rev. St. 1887, Sec. 183.	Code 1872, Sec. 383; Deering's Code,
California	Legislation: Same: Pol.	ib.; Kerr's Code, ib.

CHAPTER 5.

SECRETARY OF STATE.

Section	Section
94. Custody of records.	99. Fees.
95. Duties.	100. Same: Filing articles of eleemo-
96. Distribution of statutes, etc.	synary corporations.
97. Same: Marking books.	101. Official bonds.
98. Same: Expenses, how paid.	

Custody of Records.

- Sec. 94. The Secretary of State is charged with the custody:
1. Of all acts and resolutions passed by the Legislature.
 2. Of the journals of the Legislature.
 3. Of the Great Seal.

4. Of all books, records, deeds, parchments, maps, and papers, kept or deposited in his office pursuant to law.

Historical: Rev. St. 1887, Sec. 190.

California Legislation: See Pol. Code 1872, Sec. 407; Deering's Code, ib.; Kerr's Code, ib.

Custody of Journal: This section places no obligation upon the Secre-

tary with respect to the legislative journal except to receive the same from the clerk and record it. *Burkhart v. Reed* (1889) 2 Ida. 503; 22 Pac. 1.

Duties.

Sec. 95. It is the duty of the Secretary of State:

1. To keep a register of and attest the official acts of the Governor.

2. To affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the Governor is required.

3. To record in proper books all conveyances made to the State, and all articles of incorporation filed in his office.

4. To receive and record in proper books the official bonds of all the officers whose bonds are required to be filed with him.

5. To take and file in his office receipts for all books distributed by him.

6. To furnish on demand to any person paying the fees therefor a certified copy of all, or any part, of any law, record, or other instrument filed, deposited, or recorded in his office.

7. To present to the Legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him on account of the State.

Historical: Rev. St. 1887, Sec. 191. Omitting Subd. 6, relative to certification of elective officers commissioned by the Governor, which is now obsolete, as the Secretary issues certificates of election.

California Legislation: See. Pol. Code 1872, Sec. 408; as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Term of office and residence at seat of government: Const. Art. 4, Sec. 1. Election: Art. 4, Sec. 2. Qualifications: Art. 4, Sec. 3. To keep seal of State: Art. 4, Sec. 15. To countersign grants and permissions: Art. 4, Sec. 15. Is member of Board of State Prison Commissioners: Art. 4, Sec. 18. Also of Board of Examiners: Art. 4, Sec. 18. Also of Board of Equalization: Art. 7, Sec. 12. Also of Board of Education: Art. 9, Sec. 2. Also of Board of Land Commissioners: Art. 9, Sec. 7.

Salary: Sec. 274.

Members of Boards: Of State Board of Canvassers: Sec. 450; of Board of Prison Commissioners: Sec. 8461. Secretary of Board of Pardons: Sec. 8249. Of Board of Capitol Building Trustees: Sec. 86; of State Land Board: Sec. 1558; of State Board of Equalization: Sec. 1702; of State Board of Public Instruction: Sec. 558; of State Library

Commission: Sec. 672; of State Board of Dairy Food and Oil Commissioners: Sec. 1114. Secretary of Board of Examiners: Sec. 144. Secretary of Trustees of Soldiers' Home: Sec. 794.

To publish and distribute copies of election law: Sec. 345. To certify party emblems to county auditors prior to elections: Sec. 405. To certify proposed constitutional amendments to county auditors: Sec. 356. To file and preserve certificates of nominations for State and district offices: Secs. 384, 387, 391. To certify to county auditors names of candidates to be voted for at elections: Secs. 389, 391. To send special messengers for abstracts of votes not received within twenty days after an election: Sec. 451. To record determinations of State Board of Canvassers and to issue certificates of election: Sec. 455. To prepare lists of and issue certificates to Presidential Electors: Sec. 459.

To transmit to the Legislature lists of members elected thereto: Sec. 456. To preserve and deliver to the presiding officers of the Legislature testimony taken in legislative and State executive election contests: Secs. 51, 54. Preservation of evidence taken in election contests before the Legislature: Sec. 57. Authentication of bills not approved by Governor: Sec. 67.

Filing bills disapproved and returned after adjournment of Legislature: Sec. 67. Preservation of amendments to the Constitution after their adoption. Sec. 69. Certificate to reception of bills from Legislature: Sec. 79.

To provide office for State Engineer: Sec. 150. To file oath of Engineer and bond: Secs. 151, 152.

To provide office for Insurance Commissioner: Sec. 162. To file oath and bond of Commissioner: Secs. 163, 164.

To provide office for Register of Land Board: Sec. 1562.

To provide room for Bureau of Immigration, Labor and Statistics: Sec. 1418.

To furnish transfer tax book to probate judge: Sec. 1892.

To distribute reports of officers: Sec. 280.

To file impressions of seals of State executive officers: Sec. 336.

To attest commissions of officers: Sec. 265.

To file and record bonds of State officers: Sec. 283.

To file oaths of State officers: Sec. 272.

To file oaths of Trustees of Lewiston and Albion Normal Schools: Secs. 501, 517.

Filing oath of Commissioner of Deeds: Sec. 246. Transmission of commission to appointee: Sec. 248. Fee for issuing commission: Sec. 249.

To file bond of State Examiner: Sec. 170.

To file appointments to fill vacancies: Sec. 328.

To file bond and warrant of Water Commissioner: Sec. 3272.

To take possession of office of Auditor, of Superintendent of Public Instruction or of State Treasurer in case

of vacancy and absence of Governor: Sec. 330.

To pass on estimate of supplies for State Institutions: Sec. 865.

Duties in relation to deposit of State funds: Secs. 127, 129, 131, 136.

Filing affidavit of paid-up capital by guaranty, title and trust companies: Sec. 2963.

Filing resolution of shareholders of guaranty, title and trust company adopting the law governing such companies: Sec. 2962. Filing articles of surety companies: Sec. 2939.

Filing articles of mutual livestock insurance companies: Sec. 2925.

Issuance of certificate to mutual cooperative insurance companies: Sec. 2906.

To file certified copy of order establishing drainage districts: Sec. 2448.

Fee for incorporation of water users' association: Sec. 2842.

Record of articles of incorporation: Sec. 2721. Issuance of certificate of incorporation: Sec. 2719.

Issuance of Notarial commission: Sec. 233. Issuance of duplicate certificate to Notary the county of whose residence has been changed: Sec. 235.

To file description of seal of Bank Commissioner: Sec. 193.

To record labels, trade marks, etc.: Sec. 1451. Fee for recording trade marks and labels and for issuing certificates thereof: Sec. 1451.

Record of contract for the conditional sale of railway equipment: Sec. 2828. Fee for recording contract for the conditional sale of railway equipment: Sec. 2828.

To notify prosecuting attorney of failure of officers to make reports and to accept deposit of fines collected for the benefit of the general school fund: Sec. 281.

Distribution of Statutes, Etc.

Sec. 96. Immediately after the laws, resolutions, and journals are bound, the Secretary of State must distribute the same as follows:

1. To each department of the government at Washington and of the government of this State, one copy.

2. To the library of Congress and the State Library, two copies each.

3. To each of the States and Territories, one copy.

4. To our Senators and Representatives in Congress, and to each of the Judges of the Supreme Court of this State, one copy.

5. To each member of the Legislature, at the session when such laws and journals were adopted, one copy.

6. Of the laws alone, to the auditor of each county, in the cheapest and most expeditious manner, to be by the sheriff distributed under the directions of the auditor, one copy for the board of commissioners, one copy to each county officer and each justice of the peace.

Historical: Rev. St. 1887, Sec. 192.
California Legislation: See Pol. Code

1872, Sec. 409; Deering's Code, ib.;
as amended: Kerr's Code, ib.

Same: Marking Books.

Sec. 97. The Secretary must indelibly mark each book distributed to officers in this State (except legislative officers) with the name of the county to which, and the official designation of the officer to whom, it is sent. Such books remain the property of the State, and must be, by the officers receiving them, delivered to their successors.

Historical: Rev. St. 1887, Sec. 194.
Omitting the words "and the Reporter" in the parenthesis, which is obsolete under the repeal of Rev. St. Sec. 193, by Laws 1903, 367, Sec. 5. (Codes, Sec. 226.)

California Legislation: Same: Pol. Code 1872, Sec. 411; Deering's Code, ib.; Kerr's Code, ib.

Same: Expenses, How Paid.

Sec. 98. The expenses incurred by him, in carrying into effect the provisions of the two preceding sections, must be audited by the Board of Examiners and paid out of any moneys specially appropriated for that purpose.

Historical: Rev. St. 1887, Sec. 195.
Changing "three" sections to "two" for the reasons stated in the historical note to the preceding section. "Comptroller" changed to "Board of Examiners" to conform to Const. Art. 4, Sec. 18.

California Legislation: See Pol. Code 1872, Sec. 414; Deering's Code, ib.; Kerr's Code, ib.

Fees.

Sec. 99. The Secretary of State, for services performed in his office, shall charge and collect the following fees:

For a copy of any law, resolution, record or other document or paper on file in his office, 20 cents per folio.

For affixing certificate and seal of the State, \$1.00.

For filing articles of incorporation:

- | | |
|---|----------|
| (a) When the authorized capital stock does not exceed \$25,000.00 | \$ 10.00 |
| (b) When the authorized capital stock exceeds \$25,000.00 and does not exceed \$50,000.00 | 20.00 |
| (c) When the authorized capital stock exceeds \$50,000.00 and does not exceed \$100,000.00 | 40.00 |
| (d) When the authorized capital stock exceeds \$100,000.00 and does not exceed \$500,000.00 | 60.00 |
| (e) When the authorized capital stock exceeds \$500,000.00 and does not exceed \$1,000,000.00 | 100.00 |
| (f) When the authorized capital stock exceeds \$1,000,000.00 | 150.00 |

For filing certificates of increase of capital stock there shall be charged the fee hereinbefore prescribed for the total capitalization of the corporation, less the amount already paid for filing the original articles of incorporation.

For filing certificates of all other changes in articles of incorporation prescribed by law, \$5.00.

For issuing each certificate of incorporation, or qualification, or increase or decrease in capital stock, \$3.00.

For receiving and recording each official bond, 20 cents per folio.

For each commission, or other document signed by the Governor and attested by the Secretary (pardons excepted), \$5.00.

For searching records and archives of the State, \$1.00.

But no member of the Legislature or State officer can be charged for any search relative to matters appertaining to the duties of their offices; nor must they be charged any fee for a certified copy of any law or resolution passed by the Legislature relative to their official duties.

For recording and indexing all papers and documents required by law to be recorded, 20 cents per folio.

For filing and indexing any map or other paper where the fee for the same is not already fixed by law, \$2.00.

For filing, recording and indexing designation of agent for foreign corporations, \$2.00.

For searching Legislative Journals for records of enacted and re-enacted laws, and certifying to the same, \$5.00.

For certifying and attaching certificate to any State law, published in pamphlet form, which shall include comparing the same with the enrolled act, \$3.00.

For any other certificate required of the Secretary of State, the fee for which is not hereinbefore prescribed, \$3.00.

For filing, recording and indexing any label or trademark, \$3.00.

For all services not hereinbefore provided for, such fees therefor as may now be prescribed by law.

All fees must be paid in advance.

Historical: Laws 1901, 141, Sec. 196; amended Laws 1907, 215, Sec. 1.

California Legislation: See Pol. Code

1872, Sec. 416; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Same: Filing Articles of Eleemosynary Corporations.

Sec. 100. The Secretary of State shall charge and collect from each fraternal, religious, or eleemosynary society or organization, or any other society or organization not having capital stock and not organized for the purpose of profit, a fee of five dollars for filing articles of incorporation and issuing certificate of incorporation to such society or organization, and twenty cents per folio for recording, and he shall make no other charge, and collect no other fee, for filing, and for his certificate issued to such corporation.

Historical: Laws 1907, 451, Sec. 1.

Official Bond.

Sec. 101. The Secretary of State must execute an official bond to the State, in the sum of two thousand dollars, and must receive no fees under the laws of the State until such bond, approved by the Governor, is filed with the Auditor.

Historical: Rev. St. 1887, Sec. 197.

California Legislation: See Pol.

Code, Sec. 423; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 6.

STATE AUDITOR.

Section

- 102. Duties of Auditor.
- 103. Same: Certificate of settlement.
- 104. Same: Account of school fund.
- 105. Warrants: How drawn.
- 106. Lost Warrants: Issuance of duplicates.
- 107. Proceedings against defaulters.
- 108. Printing of blanks.
- 109. Claims against the State.
- 110. Vouchers and accounts preserved.

Section.

- 111. Appropriation necessary to authorize warrant.
- 112. Auditor to report delinquent collectors.
- 113. Inspection of books by Legislature.
- 114. Seal of office.
- 115. Official bond.
- 116. Appointment of deputy.

Duties of Auditor.

Sec. 102. It is the duty of the Auditor:

1. To superintend the fiscal concerns of the State.
2. To report to the Governor on or before the first day of December preceding each regular session of the Legislature, a statement of the funds of the State, its revenues, and of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the Treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriations and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.

3. To accompany his biennial report with tabular statements, showing: 1. The amount of each appropriation for the two preceding fiscal years, the amounts expended, and the balance, if any. 2. The amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.

4. When requested, to give information in writing to either house of the Legislature relating to the fiscal affairs of the State or the duties of his office.

5. To suggest plans for the improvement and management of the public revenues.

6. To keep and state all accounts in which the State is interested.

7. To keep an account of all warrants drawn upon the Treasurer, and a separate account under the head of each specified appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the State and the Treasurer, and therein charge the Treasurer with the balance in the Treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered.

10. To examine and settle the accounts of all persons indebted to the State, and to certify the amount to the Treasurer, and upon

the presentation and filing of the Treasurer's receipt therefor to give such person a discharge and charge the Treasurer therewith.

11. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

12. To require all persons who have received any moneys belonging to the State and have not accounted therefor to settle their accounts.

13. To direct and superintend the collection of all moneys due the State, and institute suits in its name for all official delinquencies in relation to assessment, collection and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the State, of which suits the courts of Ada County have jurisdiction, without regard to the residence of the defendants.

14. To draw warrants on the Treasurer for the payment of moneys directed by law to be paid out of the Treasury; but no warrant must be drawn unless authorized by law. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, and when the liability accrued.

15. To furnish the State Treasurer with a list of warrants drawn upon the Treasury.

16. To have printed and forwarded to the treasurer of each county blank State licenses.

17. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office.

Historical: Rev. St. 1887, Sec. 205. See 3 Ter. Ses. (1886) 190, Secs. 3, 4. Subd. 1 modified by inserting after "Governor" in line 1, the words "on or before the first day of December" in place of "at least twenty days" to conform to Laws 1903, 149 (Codes Secs. 279-281). Subd. 10 omitted because superseded by Const. Art. 4, Sec. 18, creating the Board of Examiners. Subd. 21 omitted because imposing a duty in connection with Rev. St. Sec. 1462, which was repealed by Laws 1899, 254. Subds. 14 and 15 omitted because covered by the State examiner law, Laws 1905, 386 (Codes, Secs. 170-188.)

California Legislation: Similar: Pol. Code 1872, Sec. 433; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Report: Const. Art. 4, Sec. 17; also as to printing the report: Secs. 279-281 post.

Constitutional Provisions: Term of office and residence at seat of government: Const. Art. 4, Sec. 1. Election: Art. 4, Sec. 2. Qualifications: Art. 4, Sec. 3. Member of State Board of Equalization: Art 7, Sec. 12.

Salary: Sec. 274.

Member of Boards: Of State Board of Equalization: Sec. 1702; of State Board of Canvassers: Sec. 450.

Is ex-officio recorder of brands: Sec. 1227.

To draw no warrants disapproved by the Board of Examiners: Sec. 147.

Duties relating to revenue: To have blank licenses printed and transmit the same to the county treasurer, and to hold the county officers responsible for licenses not accounted for: Secs. 1828, 1829, 1833. Duties with reference to transfer taxes: Secs. 1873-1897. Settlements with county officers for taxes collected: Secs. 1795-1803. To have assessment book printed: Sec. 1718. To have tax receipts printed if required by the county commissioners and supply same to assessors: Secs. 1734-1735. To have assessment rolls printed: Sec. 1726. To have printed and furnished to the assessors blank statements for taxpayers: Sec. 1684. May examine books of officers charged with collection of revenue: Sec. 1825. To prosecute delinquent revenue officials and for that purpose may employ counsel: Secs. 1826, 1827.

Duties with reference to deposit of State funds: Secs. 128, 129, 135.

Duplicate receipts for license money collected from surety companies to be filed with State Auditor: Sec. 2942.

Transfer to general fund of unex-

pending balances in special funds: Sec. 120.

To certify to money received in the Treasury: Sec. 118.

To take possession, with the Secretary of State, of the office of State

Treasurer in case of vacancy and absence of Governor: Sec. 330.

To assist State Examiner: Sec. 178.

To issue subpoenas for officers failing to make reports or transmit funds: Sec. 281a.

Same: Certificate of Settlement.

Sec. 103. The certificate mentioned in Subdivision 10, of Section 102, must show by whom the payment is to be made, the amount thereof, and the funds into which it is to be paid, and must be numbered in order, beginning with number one at the commencement of each fiscal year.

Historical: Rev. St. 1887, Sec. 206. Subd. "11" changed to subd. "10" to conform to changes in preceding sections.

California Legislation: Same except

"Section 433" for "Section 102" line 2: Pol. Code 1872, Sec. 434; Deering's Code, ib.; Kerr's Code, ib.

Cited: Steunenbergh v. Storer (1898) 6 Ida. 44; 52 Pac. 14.

Same: Account of School Fund.

Sec. 104. The Auditor must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes.

Historical: Rev. St. 1887, Sec. 207.

California Legislation: Same except "Controller" for "Auditor," with ad-

ditional provisions: Pol. Code 1872, Sec. 435; Deering's Code, ib.; as amended: Kerr's Code, ib.

Warrants, How Drawn.

Sec. 105. All warrants for claims which have been filed in his office must be drawn in the order of their allowance.

Historical: Rev. St. 1887, Sec. 208. Omitting "audited by (him)" as now obsolete under Const. Art. 4, Sec. 18, creating the Board of Examiners.

California Legislation: Similar: Pol. Code 1872, Sec. 436; Deering's Code, ib.; Kerr's Code, ib.

Lost Warrants: Issuance of Duplicates.

Sec. 106. In case of the loss or destruction of any warrant heretofore issued or that may be issued by the Auditor of the State of Idaho, in payment of any claim against the State of Idaho, the State Auditor is hereby authorized to issue his duplicate warrant to take the place of the warrant so lost or destroyed, upon satisfactory proof by affidavit of the loss of the said warrant: *Provided*, That in case of the issuance of any such duplicate warrant, the Auditor shall require an indemnity bond of not less than double the amount of the warrant lost, conditioned upon the payment to the State of Idaho of any loss or damage or obligation by reason of the said lost warrant becoming a claim against the State; and, *Provided further*, That it shall be the duty of the State Auditor to notify the State Treasurer of the issuance of the said duplicate warrant so that payment may be stopped upon the warrant so lost.

Historical: Laws 1907, 348, Sec. 1.

Proceedings Against Defaulters.

Sec. 107. Whenever any person has received moneys, or has money or other personal property which belongs to the State, or has been

intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to, or held in trust by, the State, and fails to render an account thereof to, and make settlement with, the Auditor within the time prescribed by law, or, when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the State Treasury any moneys belonging to the State, upon being required so to do by the Auditor, within twenty days after such requisition, the Auditor must state an account with such person, charging twenty-five per cent damages, and interest at the rate of ten per cent per annum from the time of failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated. But in case the Auditor cannot, for want of information, state an account, he may, in any action brought by him, aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the State.

Historical: Rev. St. 1887, Sec. 209.

California Legislation: Similar to last sentence, which is omitted: Pol. Code 1872, Sec. 437; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Damages—When Imposed: The damages imposed by this section are intended as a penalty for wilful dere-

liction or refusal of an officer to account for moneys which he receives, and will not be imposed where there is no design of the officer to avoid his duty or misinterpret the laws to his own advantage, and he has acted on the advice of the Attorney General. *Anderson v. Lewis* (1898) 6 Ida. 51; 52 Pac. 163.

Printing of Blanks.

Sec. 108. The State Auditor must, on the first day of August in each year, advertise that he will receive sealed proposals for contracts, for the printing and delivery at the Auditor's office in Boise City, of all blanks required by said office during the year next ensuing, and such notice must state the date for delivery of such blanks. A description and schedule must be made out, and kept by the Auditor in his office for the inspection of any person desirous of making proposals for the printing of the same. Said notice must be published in two newspapers, published in the State, at least once a week, for at least four successive weeks, and must state the time that all proposals will be opened. The proposals must be publicly opened and the award made to the lowest bidder, at the office of the Auditor by the State Treasurer and Auditor, on the day and hour named in the notice, which must be within five days from the last publication; and the blanks must be delivered within sixty days after the award; but this section does not authorize the expenditure of more than one thousand dollars in any one year. The person to whom the contract is awarded must, within ten days thereafter, file with said Auditor a bond in the sum of two thousand dollars, with at least two good and sufficient sureties, to be approved by the Auditor, and conditioned for the faithful performance of his contract in accordance with the terms thereof. And if he fails or refuses to give such bond, the contract must be awarded to the next lowest bidder, or the Auditor may advertise for other proposals as he may think best. All blanks of every description, required to be furnished by the Auditor, under any of the laws of the State, must be printed under a contract in

accordance with the provisions of this chapter, and not otherwise; and no warrant must be drawn by the Auditor upon the State Treasurer for any sum for printing, except as herein provided.

Historical: Rev. St. 1887, Sec. 210. See 6 Ter. Ses. (1871) 46, Secs. 1, 2, 3; first section amended by 7 Ter. Ses. (1873) 53, Sec. 1, and 9 Ter. Ses. (1877) 40, Sec. 1.

Cross Reference: Public printing to be done in the State: Secs. 1474-1476.

Claims Against the State.

Sec. 109. All persons having claims against the State must exhibit the same, with the evidence in support thereof, to the Auditor, to be audited, settled and allowed by the Board of Examiners, within two years after such claim shall accrue, and not afterward. In all suits brought in behalf of the State, no debt or claim must be allowed against the State as a set-off but such as have been exhibited to the Auditor, and allowed or disallowed by the Board of Examiners except only in cases where it is proved to the satisfaction of the court that the defendant, at the time of the trial, is in possession of vouchers which he could not produce to the Auditor, or that he was prevented from exhibiting the claim to the Auditor by absence from the State, sickness, or unavoidable accident. No claim which is not provided for by law shall be audited or set off.

Historical: Rev. St. 1887, Sec. 211. See 3 Ter. Ses. (1866) 90, Sec. 7. Re-written to conform to Const. Art. 4, Sec. 18, creating the Board of Examiners.

Cross Reference: Board of Examiners: Const. Art. 4, Sec. 18; also Secs. 144-148 post.

Vouchers and Accounts Preserved.

Sec. 110. All accounts, vouchers, and documents settled, or to be settled, by the Auditor or Board of Examiners must be preserved in his office, and copies thereof, authenticated by the official seal of the Auditor, shall be given to any person interested therein who requires the same.

Historical: Rev. St. 1887, Sec. 213. 3 Ter. Ses. (1866) 190, Sec. 9, Words

"or Board of Examiners" inserted on the authority of Const. Art. 4, Sec. 18.

Appropriation Necessary to Authorize Warrant.

Sec. 111. In all cases of specific appropriations, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the State, when audited, the Auditor must draw warrants upon the Treasury for the amount; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the Auditor, or paid by the Treasurer, until appropriation is made by law for that purpose, nor must the whole amount drawn for and paid for any purpose or under any one appropriation ever exceed the amount appropriated.

Historical: Rev. St. 1887, Sec. 214. See 3 Ter. Ses. (1866) 190, Sec. 10.

Cross Reference: No money shall be drawn from the Treasury except

pursuant to appropriation: Const. Art. 7, Sec. 13.

Cited:. Kingsbury v. Anderson (1898) 5 Ida. 771; 51 Pac. 744.

Auditor to Report Delinquent Collectors.

Sec. 112. The Auditor must report to the Legislature, within ten

days after the commencement of each regular session, a list of all the collectors of revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons therefor.

Historical: Rev. St. 1887, Sec. 217.
3 Ter. Ses. (1866) 190, Sec. 13.

Inspection of Books by Legislature.

Sec. 113. All the books, papers, letters, and transactions pertaining to the office of the Auditor are open to the inspection of a committee of the Legislature, or either branch thereof, who shall examine all the Auditor's accounts.

Historical: Rev. St. 1887, Sec. 219.
3 Ter. Ses. (1866) 190, Sec. 15.

Seal of Office.

Sec. 114. The Auditor must keep a seal of office, for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original.

Historical: Rev. St. 1887, Sec. 220.
3 Ter. Ses. (1866) 190, Sec. 17.

Official Bond.

Sec. 115. The Auditor must execute an official bond in the sum of ten thousand dollars.

Historical: Rev. St. 1887, Sec. 222.		Code 1872, Sec. 442; Deering's Code,
California Legislation: Sec. Pol.		ib.; Kerr's Code, ib.

Appointment of Deputy.

Sec. 116. The Auditor may appoint a deputy who shall receive no compensation as deputy.

Historical: Last part of Rev. St. 1887, Sec. 218, re-written. The salary of the deputy is payable out of		the appropriation for clerical assistance found in the general appropriation bills.
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CHAPTER 7.

STATE TREASURER.

Article	Article
1. Duties in general.	3. Deposit of State funds.
2. Funds and warrants.	4. Miscellaneous provisions.

ARTICLE 1.

DUTIES IN GENERAL.

Section	Section
117. Duties of Treasurer.	118a. Money to be kept in vault.
118. Money to be accompanied by certificate.	

Duties of Treasurer.

Sec. 117. It is the duty of the Treasurer:

1. To receive and keep all moneys belonging to the State not required to be received and kept by some other person.

2. To file and keep the certificates of the Auditor delivered to him when moneys are paid into the Treasury.

3. To deliver to each person paying money into the Treasury a receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants drawn by the Auditor out of the funds upon, and in the order in, which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the Auditor, on the last day of each month, the amount disbursed for redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the Treasury to the credit of each fund.

9. At the request of either house of the Legislature, or any committee thereof, to give information in writing as to the condition of the Treasury or upon any subject relating to the duties of his office.

10. To report to the Governor at the time prescribed in this Code, the exact balance in the Treasury to the credit of the State, with a summary of the receipts and payments of the Treasury during the two preceding fiscal years.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge such other duties as may be imposed upon him by law.

Historical: Rev. St. 1887, Sec. 230. See 2 Ter. Ses. (1864) 415, Sec. 2.

California Legislation: Similar but "Controller" for "Auditor" throughout: Pol. Code 1872, Sec. 452; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Term of office: Const. Art. 4, Sec. 1. Residence at seat of government: Ib. Qualifications: Art. 4 Sec. 3. Election: Art. 4, Sec. 2. Member of Board of Equalization: Art. 7, Sec. 12. Is custodian of school fund: Art. 9, Sec. 3.

Salary: Sec. 274.

Member of Boards: Of State Board of Canvassers: Sec. 450; of State Board of Equalization: Sec. 1702; of Board of Capitol Building Trustees: Sec. 86; is ex-officio Treasurer of Board of Trustees of Lewiston Normal School: Sec. 502; is ex-officio Treasurer of Board of Trustees of Academy of Idaho: Sec. 548; is ex-officio Treasurer of Board of Trustees of Albion Normal School: Sec. 519; is

Treasurer of State Highway Commission: Sec. 1063; is ex-officio Treasurer of Board of Trustees of Industrial Training School: Sec. 808; is ex-officio Treasurer of Board of Trustees of North Idaho Insane Asylum: Sec. 787.

Deposit of securities by surety companies: Sec. 2939.

Payment to Treasurer of license fees collected from insurance companies: Sec. 2942.

Revocation of authority of insurance companies for failure to pay judgment of fine incurred by violation of law requiring insurance policies to be countersigned by resident agents: Sec. 2879.

Award of contracts for printing supplies for Auditor's office: Sec. 108.

To take charge of unclaimed proceeds of sale of floating timber: Sec. 879.

To take possession of office of Secretary of State in case of vacancy

and absence of Governor: Sec. 330.

To keep papers and securities belonging to Land Board: Sec. 1367.

To assist State Examiner: Sec. 178.

Duties in collection of transfer tax: Secs. 1873-1897.

To issue subpoenas for officers failing to make reports or transmit funds: Sec. 281a.

Settlements with county officers for taxes collected: Secs. 1795-1803.

To report for fees paid over by the clerk of the Supreme Court: Sec. 226.

To deposit fees of officers: Sec. 274.

To audit salary of Auditor: Sec. 274.

To pay no warrant until appropriation is made: Sec. 111.

To stop payment on lost warrants: Sec. 106.

Money to Be Accompanied by Certificate.

Sec. 118. He must receive no money into the Treasury unless accompanied by the certificate of the Auditor.

Historical: Rev. St. 1887, Sec. 231.

California Legislation: Same except "Controller" for "Auditor," and with

additional provisions: Pol. Code 1872, Sec. 453; Deering's Code, ib.; Kerr's Code, ib.

Money to Be Kept in Vault.

Sec. 118a. All State moneys in the custody of the State Treasurer not otherwise deposited as is or may be by law provided, shall be kept in the vault and safe as provided for that purpose in the Capitol building and in no other place. A violation of this section shall subject the State Treasurer, upon conviction thereof, to pay a fine of not less than five thousand dollars nor more than ten thousand dollars, or to imprisonment in the State Prison for a period of not less than one nor more than ten years, or to both such fine and imprisonment.

Historical: Laws 1905, 31, Sec. 1; re-written so as to omit portion requiring capitol trustees to furnish a

vault and safe and making an appropriation therefor, the purposes of which have been fulfilled.

ARTICLE 2.

FUNDS AND WARRANTS.

Section

119. General fund defined.

120. Transfers to general fund.

121. Same: Revenues temporarily diverted.

122. Apportionment of forest reserve funds.

Section

123. Payment of warrants.

124. Payment in part.

125. Unpaid warrants: Interest.

126. Refusal to pay warrants.

General Fund Defined.

Sec. 119. The general fund consists of moneys received into the Treasury and not specially appropriated to any other fund.

Historical: Rev. St. 1887, Sec. 232.

California Legislation: Same: Pol. Code 1872, Sec. 454; Deering's Code, ib.; Kerr's Code, ib.

Cited: Steunenberg v. Storer (1898) 6 Ida. 44; 52 Pac. 14.

Transfers to General Fund.

Sec. 120. Whenever there shall be or remain in any special or temporary fund created or established by or under any law of the State of Idaho, a surplus or unexpended balance after the purpose or purposes for which such special or temporary fund was provided shall have been fully accomplished, the State Auditor and State Treasurer are hereby authorized, directed and required to transfer

such surplus or unexpended balance, from the fund in which the same shall be or remain to the general fund of the State.

Historical: Laws 1905, 219, Sec. 1.

Same: Revenues Temporarily Diverted.

Sec. 121. Whenever revenues are diverted from the general fund of the State, in order to provide a special or temporary fund for a particular purpose or a number of purposes, and such purpose or purposes shall have been fully accomplished, such diversion shall cease, and thereafter such revenues shall accrue to the general fund as they did prior to the time when such diversion was authorized and required.

Historical: Laws 1905, 219, Sec. 2.

Apportionment of Forest Reserve Funds.

Sec. 122. It shall be the duty of the State Treasurer to receive any and all moneys paid or offered to be paid to him as such Treasurer by the Treasurer of the United States on account of the moneys received from such forest reserve, under and by virtue of the act of Congress of June 30, 1906, and to keep a separate account of the sums received from each reserve, and to apportion the distributive shares of the same among the several counties in which such forest reserves are situated in proportion to the area of such reserve in such county, and to pay the same over to the several county treasurers of such counties at least once in each and every year, and as soon after the same is received as such apportionment can be made.

As soon as any of said moneys are received by the county treasurer, he shall apportion the same as follows. Seventy-five per cent thereof to the general road fund of the county, to be used in the construction and repair of roads and bridges in the county, under the direction of the county commissioners of the county, giving the preference, when other conditions are equal, to roads and bridges in the reserves whenever and wherever the same are most needed, and twenty-five per cent thereof to the general common school fund of the county, to be used in the construction, support and maintenance of public school houses and schools in such county according to the school laws.

Historical: Laws 1907, 162, Secs. 1, 2.

Payment of Warrants.

Sec. 123. The State Treasurer must pay warrants on any of the several funds in his office in their regular order, as prescribed by law.

Historical: Rev. St. 1887, Sec. 235.
6 Ter. Ses. (1871) 41, Sec. 1.

Payment in Part.

Sec. 124. When any warrant is presented for payment and there is not money on hand to pay the warrant in full, the Treasurer must pay to the holder thereof such sums only as may be in the fund upon which the warrant is drawn, and divide the warrant, retaining that portion on which the number of the warrant is, and require the owner

of the warrant to receipt for the amount received, on the back of said portion; the other part of the warrant must be returned to the owner thereof, with the following indorsement on the back: No. (in figures); number of warrant written; total amount of warrants to date; amount paid on warrant; balance due on warrant on the date of partial payment; date of partial payment; name of Treasurer. And said portion of warrant, so indorsed, constitutes a charge against the fund on which it was originally drawn for the amount of the balance as shown by the indorsement, and is payable out of the first money in said fund; and the above provided division of any warrant in no way destroys its validity; but nothing in this chapter must be construed as allowing the payment of interest on interest.

Historical: Rev. St. 1887, Sec. 236.
6 Ter. Ses. (1871) 41, Sec. 2.

Unpaid Warrants: Interest.

Sec. 125. It is the duty of the State Treasurer to keep a register of the State warrants presented to him, and not paid for want of funds, in the order of their presentation, and to write across the back of the same, "Presented and not paid for want of funds," said indorsement to be dated and signed by the Treasurer; and said warrants draw interest at the rate of six per cent per annum from date of presentation until paid.

Historical: Rev. St. 1887, Sec. 238; | amended Laws 1899, 228, Sec. 1;
(See 2 Ter. Ses. (1864) 415, Sec. 5.) | amended Laws 1901, 107, Sec. 1.

Refusal to Pay Warrants.

Sec. 126. If the State Treasurer wilfully and unlawfully refuses to pay any warrant lawfully drawn upon the Treasury, he forfeits and must pay fourfold the amount, to be recovered by action against the Treasurer and his sureties on his official bond, or otherwise.

Historical: Rev. St. 1887, Sec. 240.
See 2 Ter. Ses. (1864) 415, Sec. 10.

ARTICLE 3.

DEPOSIT OF STATE FUNDS.

Section	Section
127. State funds to be deposited in banks.	132. Treasurer to make no profit.
128. Interest on deposit: How computed.	133. Neglect of Treasurer a misdemeanor.
129. Security for deposits.	134. Bribery of Treasurer a felony.
130. Definition of bank and security.	135. Sale of deposited securities.
131. Investigation of banks and securities.	136. Definition of "Several Current Funds"; Application of law.

State Funds to Be Deposited in Banks.

Sec. 127. The State Treasurer shall deposit, and at all times keep on deposit, in the State or national banks, or some of them, doing business in this State and of approved standing and responsibility, the amount of money in his hands belonging to the several current funds in the State Treasury, and any such bank may apply for the privilege of keeping on deposit such funds or some part thereof. All

such deposits shall be subject to payment when demanded by the State Treasurer on his check, and any bank receiving and holding any such deposit as aforesaid, shall be required to pay, and shall pay, to the State, for the privilege of holding the same, not less than two per cent per annum upon the amount so deposited, as herein provided; and subject, also, to such regulations as are imposed by law and the rules adopted by the State Treasurer for receiving and holding such deposits. The Treasurer shall not give a preference to any one or more banks applying to be made such depositories, as in this article provided, in the amount he may so deposit, but shall keep deposited with each of said banks such part of said money, so on deposit, as the par value of the securities, or the penalty in the bond furnished by said bank, is a part of the sum of all the penalties of all the bonds and the par value of all the securities, so furnished by the banks so applying to be made depositories, so that such moneys may at all times be deposited with said banks pro rata as to the penalty of the bond, or the par value of the securities, furnished by them respectively: *Provided*, The Treasurer shall not have on deposit in any bank, at any time, more than the par value of the securities, nor more than one-half of the amount of the bond given by said bank: *Provided, further*, That where a surety bond in some responsible surety company shall be furnished to the satisfaction and approval of the Governor, Secretary of State and Attorney General, as hereinafter provided, the amount on deposit may equal, but shall not exceed, ninety per cent of the penalty of the bond; but in no case shall the amount deposited by him in any bank exceed seventy five per cent of its paid-up capital stock. The Governor, Secretary of State and Attorney General shall, annually, on the last day of April, or when said day shall fall on Sunday, then on the day next preceding, fix the rate of interest to be paid on such deposits, which shall be not less than the rate hereinbefore in this article established, and which rate, when so established, shall not be changed for such period of one year.

Historical: Laws 1905, 305, Sec. 1.

Interest on Deposit: How Computed.

Sec. 128. The amount to be paid by any and all banks, under the provisions of this article, for the privilege of keeping such public funds on deposit, shall be computed on the average daily balance of the public moneys kept on deposit therewith, and shall be credited and paid to the State quarterly on the first day of January, April, July and October of each year, and such depository shall, quarterly, on the days aforesaid, render a statement, in duplicate, to the Treasurer and Auditor, showing the amounts so credited. The Treasurer shall require, and it is hereby made the duty of, every such depository to keep accurate accounts of all such moneys deposited with it, showing the amount deposited and when deposited, and to render, at the beginning of each and every month, to the Treasurer and Auditor, a statement, in duplicate, showing the daily balance of the State moneys held by it during the month next preceding, and the interest thereon, and all sums paid to the State for the privilege of keeping said

moneys on deposit as aforesaid, shall be apportioned by the Auditor and credited by the Treasurer to the account of the general fund.

Historical: Laws 1905, 305, Sec. 2; .
amended Laws 1907, 95, Sec. 1.

Security for Deposit.

Sec. 129. For the security of funds so deposited under the provisions of this article, the State Treasurer shall require all such depositories to deposit securities of the kind and character hereinafter described, or to give bonds, for the payment of such deposits and the interest thereon. Said bonds, when given, shall run to the State of Idaho, and, together with the securities offered, are to be approved by the Governor, Secretary of State and Attorney General. The officers, or stockholders, of the bank seeking to qualify as a depository shall be ineligible as sureties on the bond provided for under this section. Said bond shall be conditioned that the depository shall, at the beginning of each and every month, render to the Treasurer and Auditor a statement, in duplicate, showing the daily balance and the amount of money of the State held by it during the month preceding, and the amount of the interest thereon, and for the payment of the said deposit and the interest thereon, as hereinbefore provided, when demanded by the State Treasurer on his check at any time, and, generally, to do and perform whatever may be required by the provisions of this article and a faithful discharge of the trust reposed in such depository. The said bond shall be in substance as follows:

Know all men by these presents, that.....as principal andsureties, are held and firmly bound unto the State of Idaho, in the sum ofdollars for the payment of which, well and truly to be made, we hereby bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Dated theday of.....A. D.

Whereas, the said principal, thebank of, has applied for a part of the current funds in the State Treasury of the State of Idaho to be deposited in said bank, the amount whereof shall be subject to withdrawal or diminution by said Treasurer as the requirements of the State shall demand, and which amount may be increased or decreased as the said Treasurer may determine; and

Whereas, the said bank, in consideration of said deposit and for the privilege of keeping the same, has agreed to pay the State of Idaho interest on such sum a rate not less than two per cent per annum on the amount of said deposit, the same to be credited and paid quarterly upon the daily average of such amount as the said bank shall have on deposit for the quarter, or any fraction thereof, next preceding the crediting or payment of said interest, which interest shall be computed and credited to the account of the State and shall become henceforth a part of such deposit.

Now, therefore, if said.....bank ofshall, at the beginning of each and every month render to the State Treasurer and State Auditor a statement, in duplicate, showing the daily balance of the State moneys held by it during the month next preceding, and the

interest thereon, and shall well and truly keep all said sums of money so deposited, or to be deposited, as aforesaid, and the interest thereon, subject at all times to the check and order of the State Treasurer as aforesaid, and shall pay over the same, and any part thereof, upon the check or written demand of the State Treasurer, and to his successor in office as shall be by him demanded, and shall calculate, credit and pay said interest as aforesaid, and shall in all respects, save and keep the State of Idaho and the said State Treasurer harmless and indemnified for and by reason of the making of said deposit, or deposits, then this obligation shall be void and of no effect, otherwise to be and to remain in full force and virtue.

Witness our hands and seals the day and year first above written.

..... (Seal) (Seal)
..... (Seal) (Seal)
..... (Seal) (Seal)

Where the penalty of any such bond exceeds ten thousand dollars, the sureties thereon may become severally liable for any sum not less than ten thousand dollars; but such surety or sureties shall be required to justify in double the amount for which each, respectively, becomes liable on said bond; in all other respects, the justification of sureties shall be as required by Section 4934 of these Codes. All bonds and securities, after approval, shall be deposited with and held by the State Auditor. It shall be the duty of the Attorney General to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of this article.

Historical: Laws 1905, 305, Sec. 3.

Definition of Bank and Security.

Sec. 130. The word "bank" or "banks" whenever used in this article, shall be held to include trust companies, and the word "bonds" to include bonds furnished by surety companies authorized and qualified to do business in this State. The word "security" or "securities" shall be construed to include United States bonds, bonds of the State of Idaho, and those for which it is ultimately liable, bonds of the several counties, cities, villages, towns and school districts of this State, warrants of the State of Idaho, and of the several counties thereof drawn on the current expense fund. No securities shall be approved unless their market value shall equal their par or face value, or where there has been default within three years in the payment of the principal or interest of any obligation issued by the same maker. Upon payment to the State of the deposits and accrued interest for which security was given, it shall be returned to the bank furnishing the same, and when such securities can be conveniently segregated, the amount thereof may be reduced in proportion as such deposits shall be reduced or repaid to the State.

Historical: Laws 1905, 305, Sec. 4.

Investigation of Bank and Securities.

Sec. 131. All personal bonds shall be investigated and the sufficiency of the same, or the securities thereon, determined as often as once every six months, and shall be renewed every two years by the

Governor, Secretary of State and Attorney General, or a majority of them, may cause an investigation to be made at any time to ascertain the condition of any bank or the sufficiency of any bond or security offered or given under this article, and to require new or additional security whenever in their judgment the safety of any deposit of State moneys under this article requires it; and such deposit shall be withdrawn unless such new or additional security be given. Any expense incurred in carrying out the provisions of this article shall be audited by the State Board of Examiners and paid out of the "Official Bonds and Insurance Fund" of the State. The State Treasurer shall not be liable personally or upon his official bond for any moneys that may be lost by reason of the failure or insolvency of any bank which becomes a depository under this article. The Governor, or any person authorized by him in writing, may, during business hours, in the presence of the Treasurer or his deputy, inspect and examine the books of account in the office of the Treasurer, and all contracts, writings, securities and other papers belonging to the State, or pertaining to the business thereof, held by the Treasurer, and may inspect and count the moneys belonging to this State and the several funds thereof in the custody of the Treasurer, and it is hereby made the duty of the State Treasurer to furnish all reasonable facilities for the purpose.

Historical: Laws 1905, 305, Sec. 5.

Treasurer to Make No Profit.

Sec. 132. The making of profit, directly or indirectly, by the State Treasurer, out of any money in the State Treasury, belonging to the State, the custody of which the State Treasurer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or the removal by the State Treasurer or by his consent, of such moneys, or a part thereof, out of the vault or safe of the Treasurer's department, after the same shall have been provided by the State, or out of any legal depository of such moneys, except for the payment of warrants legally drawn, or for the purpose of depositing the same, under the provisions of this article, in banks which shall have qualified as depositories, shall constitute a felony, and, on conviction thereof, shall subject the Treasurer to imprisonment in the State Penitentiary for a term not exceeding two years or a fine not exceeding five thousand dollars, or to both such fine and imprisonment, and the Treasurer shall be liable upon his official bond for all profits realized from such unlawful use of such funds.

Historical: Laws 1905, 305, Sec. 6.

Neglect of Treasurer a Misdemeanor.

Sec. 133. If the State Treasurer shall wilfully fail or refuse at any time to do or perform any act required of him by this article, he shall be guilty of a misdemeanor, and, upon conviction thereof, he shall be sentenced to pay a fine not exceeding five thousand dollars.

Historical: Laws 1905, 305, Sec. 7.

Bribery of Treasurer a Felony.

Sec. 134. The offering, or giving, directly or indirectly, by any

bank or depository, or by any officer or stockholder thereof, or by any other person or persons in its or their behalf, or by its or their knowledge, acquiescence or authority, or in its or their interest, to the State Treasurer, of any gift, compensation, reward or inducement with the intent or for the purpose of inducing said Treasurer to deposit funds of the State in any bank contrary to any law of this State, shall constitute a felony, and shall, upon conviction thereof, subject the party or parties offending to imprisonment in the State Penitentiary for a period not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment.

Historical: Laws 1905, 305, Sec. 8.

Sale of Deposited Securities.

Sec. 135. The State Auditor is hereby authorized and empowered to sell any or all of the bonds or warrants, or both, that may be deposited as security for the deposit of any State funds in any depository under this article, at public or private sale, whenever there shall be a failure or refusal upon the part of any such bank, as a depository, to pay over the said funds or any part thereof upon the check or demand of the Treasurer made on such bank. Notice of the sale of such bonds or warrants, under this article, shall be given for a period of thirty days in a newspaper published in the city of Boise, Idaho, and when the sale of bonds is made by the said Auditor, either at public or private sale, under this article, and such bonds or warrants, or both, have been transferred by the Auditor, the absolute ownership of such bonds and warrants rests in the purchaser or purchasers, upon the payment of the purchase money to the Treasurer and upon filing a duplicate receipt thereof with the Auditor. Should there be any surplus after paying the amount due the State, and expenses of sale, it shall be paid over to the bank making the deposit.

Historical: Laws 1905, 305, Sec. 9.

Definition of "Several Current Funds": Application of Law.

Sec. 136. The words "several current funds" used in this article shall be held to apply to all funds in the State Treasury, except the permanent educational, public school, or university lands funds. Nothing in this article contained shall be construed to deprive the State Board of Land Commissioners of the power to invest or dispose of the funds derived from the sale of public lands as is now or may be provided by law. Whenever, by the provisions of this article, a duty is enjoined upon the Governor, Secretary of State and Attorney General, a majority may act and the decision of the majority shall be sufficient.

Historical: Laws 1905, 305, Sec. 10.

ARTICLE 4.

MISCELLANEOUS PROVISIONS.

Section	Section
137. Inspection of Treasurer's office.	140. State Treasurer may appoint a deputy.
138. Same: Inspection by Governor.	141. Official bond.
139. Official seal: Authentication of papers.	

Inspection of Treasurer's Office.

Sec. 137. The books, papers, letters and transactions pertaining to the office of Treasurer, are at all times during office hours open to the inspection of a committee of the Legislature, or either branch thereof, to examine and settle all accounts, or to take copies of the same, and to count all moneys; and when the successor of any such Treasurer is appointed and qualified, the State Auditor must examine and settle all the accounts of such Treasurer, remaining unsettled, and give to him a certified statement, showing the balance of moneys securities and effects for which he is accountable, and which have been delivered to his successor, and report the same to the Legislature.

Historical: Rev. St. 1887, Sec. 237.
See 2 Ter. Ses. (1864) 415, Sec. 4.

Same: Inspection by Governor

Sec. 138. The Governor of the State is hereby authorized and directed, at any time whenever he considers it necessary for the safe keeping and disbursement of public moneys, to make an examination of the amount in the possession of the State Treasurer, and for that purpose must have access to the same.

Historical: Rev. St. 1887, Sec. 242.
3 Ter. Ses. (1865) 141, Sec. 2.

Official Seal: Authentication of Papers.

Sec. 139. The Treasurer must keep a seal of office for the authentication of all papers, writings and documents required by law to be certified by him; and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original documents.

Historical: Rev. St. 1887, Sec. 239.
2 Ter. Ses. (1864) 415, Sec. 9.

Deputy Treasurer.

Sec. 140. The State Treasurer may appoint a deputy State Treasurer, who shall take the oath required of his principal, and may perform all the official duties of such principal, being subject to the same regulations and penalties, and for all whose official acts the State Treasurer shall be responsible.

Historical: Laws 1899, 220, Secs. 1.
2, 3; re-enacting Laws 1893, 150, Secs.
1, 2, 3; re-written in combination.

Official Bond.

Sec. 141. The Treasurer must execute an official bond in the sum of sixty-five thousand dollars.

Historical: Rev. St. 1887, Secs. 234.
Act Feb. 10, 1887.
California Legislation: Similar ex-

cept amount of bond is \$100,000: Pol.
Code 1872, Sec. 459; Deering's Code,
ib.; Kerr's Code, ib.

CHAPTER 8.**ATTORNEY GENERAL.**

Section
142. Duties of Attorney General.

Section
143. Official bond.

Duties of Attorney General.

Sec. 142. It is the duty of the Attorney General:

1. To attend the Supreme Court and prosecute or defend all causes to which the State or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party unless the interest of the county is adverse to the State or some officer thereof acting in his official capacity. Also to prosecute and defend all the above mentioned causes in the United States courts. And in all cases where he shall be required to attend upon the United States courts, other than those sitting within this State, he shall be allowed his necessary and actual expenses, all claims for which shall be audited by the State Board of Examiners. And there is hereby annually appropriated out of any money in the State Treasury not otherwise appropriated, a sufficient sum for the payment of such expenses not exceeding the sum of five hundred dollars in any one year.

2. After judgment in any of the causes referred to in the preceding sub-division, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the State or to any county.

4. To keep a docket of all causes in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and, when prosecuted to judgment, a memorandum of the judgment; of any process issued thereon, and whether satisfied or not, and if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention.

5. To exercise supervisory powers over prosecuting attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge.

6. To give his opinion in writing, without fee, to the Legislature or either house thereof, and to the Governor, Secretary of State, Treasurer, Auditor, and the Trustees or Commissioners of State Institutions, when required, upon any question of law relating to their respective offices.

7. When required by the public service, to repair to any county in the State and assist the prosecuting attorney thereof in the discharge of his duties.

8. To bid upon and purchase, when necessary, in the name of the State, and under the direction of the Auditor, any property offered for sale under execution issued upon judgments in favor of or for the use of the State, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding sub-division has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance, taking precedence of the judgment in favor of the State, under the direction of the Auditor, to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the Board of Examiners, be paid out of any money appropriated for such purposes.

10. When in his opinion it may be necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the State, such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors; the cost necessary to the prosecution must, when allowed by the Board of Examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the other duties prescribed by law.

12. To report to the Governor, at the time required by this Code, the condition of the affairs of his department, and to accompany the same with a copy of his docket, and of the reports received by him from prosecuting attorneys.

Historical: Rev. St. 1887, Sec. 250. (See 13 Ter. Ses. (1885) 31, Sec. 3.) Subd. 1 amended Laws 1901, 162, Sec. 1. "Board of Examiners" substituted for "Controller" in subds. 9 and 10 to conform to Const. Art. 4, Sec. 18.

California Legislation: See Pol. Code 1872, Sec. 470; Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: Term of office and residence at seat of government: Const. Art. 4, Sec. 1. Election: Art. 4, Sec. 2. Qualifications: Art. 4, Sec. 3. Is member of Board of Pardons: Art. 4, Sec. 7. Also of Board of Prison Commissioners: Art. 4, Sec. 18. Also of Board of Examiners: Art. 4, Sec. 18. Also of Board of Equalization: Art. 7, Sec. 12. Also of Board of Education: Art. 9, Sec. 2. Also of Board of Land Commissioners: Art. 9, Sec. 7. Salary: Sec. 274.

Member of Boards: Of State Board of Canvassers: Sec. 450; of State Board of Equalization: Sec. 1702; of State Land Board: Sec. 1558; of Board of Prison Commissioners: Sec. 8461; of Board of Public Instruction: Sec. 558; of State Board of Health: Sec. 1080; of Board of Trustees of Soldiers' Home: Sec. 794. Chairman State Library Commission: Sec. 672.

Is ex-officio Judge Advocate General of Militia: Sec. 685.

To bring suit against officers who fail to perform any duty required of them by the transfer tax law: Sec. 1896.

Duties in relation to deposit of State funds: Secs. 127, 129, 131, 136.

To bring suit to cancel State highway leases on direction of State Highway Commission: Sec. 1074.

To represent the State or cause it to be represented in proceedings before the land office: Sec. 1561.

To bring suits against persons occupying State lands without a lease: Sec. 1578.

Approval of Bank Commissioner's bond: Sec. 191.

To institute suit for penalties incurred by foreign banks. Sec. 2984.

To conduct suits brought under the banking law: Sec. 3010.

To give legal advice and conduct prosecutions for State Examiner: Sec. 186. To enforce compliance with the instructions of the State Examiner: Sec. 176.

To sue insurance companies for fines incurred by non-payment of premium tax. Sec. 2867. To bring action to enjoin fraternal insurance companies from doing business: Sec. 2901.

To advise State Engineer: Sec. 158.

To render assistance to Labor Commission: Secs. 1436, 1439.

To pass on estimates of supplies for State Institutions: Sec. 865.

To render assistance to the Dairy, Food and Oil Commissioner and to prosecute violations of the dairy, food and oil law: Sec. 1121.

To represent the State Medical Board on appeal to the Supreme Court: Sec. 1355.

Appeal to Governor and Attorney General from action of State Board of Pharmacy in granting or revoking a druggist's certificate: Sec. 1393.

To prosecute mine owners for refusal to comply with orders of Inspector: Sec. 205.

To foreclose school fund mortgages under direction of the State Board of Land Commissioners: Sec. 1642.

May employ counsel to conduct prosecutions of officials who neglect or violate their duty under the revenue laws: Sec. 1827.

May be required to give opinion on statement of judge furnished in capital case: Sec. 8011.

Cases in Supreme Court: The attorney general is the attorney for the State on an appeal from a judgment of conviction in a criminal case and

must be served with the transcript and appellant's brief. *State v. Miles* (1906) 11 Ida. 784; 83 Pac. 697.

The attorney general is the attorney for a county on an appeal from a judgment in a suit in which the county is a party, and must be served as such with the transcript and brief of appellant. *Corker v. Elmore Co.* (1906) 11 Ida. 787; 84 Pac. 509.

Official Bond.

Sec. 143. The Attorney General must execute an official bond in the sum of five thousand dollars.

Historical: Rev. St. 1887, Sec. 252.

California Legislation: Same except "ten" for "five": Pol. Code 1872, Sec.

473; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 9.

STATE BOARD OF EXAMINERS.

Section

- 144. Organization of Board.
- 145. Sessions of Board.
- 146. Examinations of claims.

Section

- 147. Auditor drawing warrant for disapproved claim: Liability.
- 148. Board may make rules.

Organization of Board.

Sec. 144. The Board of Examiners created by Section 18, of Article 4, of the Constitution, shall be styled the "State Board of Examiners." The Governor shall be chairman and the Secretary of State shall be secretary of the Board.

Historical: Laws 1899, 24, Sec. 1; re-enacting Laws 1890-91, 45, Sec. 1.

powers of Board: Const. Art. 4, Sec. 18.

Cross Reference: Constitution and

Sessions of Board.

Sec. 145. Regular sessions of the Board shall be held on the first and third Tuesdays of every month, and special sessions at any time, if all the members are present.

Historical: Laws 1899, 24, Sec. 2; re-enacting Laws 1890-91, 45, Sec. 2.

Cited: (Dis. op.) *Pyke v. Steunenberg* (1897) 5 Ida. 614; 51 Pac. 614.

Examination of Claims.

Sec. 146. It shall be the duty of the Board to examine all claims against the State, except salaries and compensation of officers fixed by law, and except fixed appropriations for principal and interest of the public bonded debt, and except claims against the State already presented to the Board and favorably reported by it to the Legislature for passage. The Board may approve or disapprove any claim or demand against the State, or any item thereof, or may recommend a less amount in payment of the whole, or any item thereof, and a decision of a majority of the members shall stand as the decision of the Board. But no claim shall be examined, considered or acted upon by said Board, unless an account is filed, giving all the items of the claim, duly verified by the oath of the person presenting said

claim, or his agent, as to its correctness, and that the amount claimed is justly due, and receipted vouchers showing the payment of said money be filed with the claim.

Historical: Laws 1890-91, 45, Sec. 3; re-enacted Laws 1899, 24, Sec. 3; amended Laws 1903, 373, Sec. 1; amended Laws 1905, 365, Sec. 1.

Cross Reference: Claims to be exhibited to Auditor: Sec. 109. Allowed claims to be preserved by Auditor: Sec. 110.

Claims to Be Presented: Under a territorial statute requiring persons having claims against the Territory to exhibit the same, with the evidence in support thereof, to the controller to be audited, settled and allowed, the controller has discretion in allowing a claim and issuing his warrant therefor although the same has been certified and corrected by another territorial officer, whose duty it is to examine and certify accounts of the controller when satisfied of their legality. *Crutcher v. Cram* (1871) 1 Ida. 372.

A claim arising out of a contract for the construction of a State wagon road which stipulates for final payment when the contract is executed to the satisfaction of the commissioners and Board of Examiners, must be submitted for the approval of the Board of Examiners before the Auditor can be required to issue his warrant therefor. *Winter v. Ramsey* (1895) 4 Ida. 303; 39 Pac. 193.

Judicial Review: It is within the legitimate authority of the court to compel the Board to act upon any matter which it is by law required to act upon, but the Supreme Court has no authority to direct or control how such Board shall act. (*Sullivan, J., dissents.*) *Pyke v. Steunenberg* (1897) 5 Ida. 614; 51 Pac. 614.

Auditor Drawing Warrant for Disapproved Claims: Liability.

Sec. 147. In case the Auditor shall draw a warrant for any claim, or part of a claim or item thereof, which is disapproved by the Board, he shall be liable upon his official bond for the same if any loss shall accrue to the State therefrom.

Historical: Laws 1899, 24, Sec. 4; re-enacting Laws 1890-91, 45, Sec. 4.

Board May Make Rules.

Sec. 148. The Board may make such rules and regulations for the conduct of its business as it may deem desirable, not inconsistent with law.

Historical: Laws 1899, 24, Sec. 5; re-enacting Laws 1890-91, 45, Sec. 5.

Cited: *Winters v. Ramsey* (1895) 4 Ida. 303; 39 Pac. 193.

CHAPTER 10.

STATE ENGINEER.

Section

- 149. Appointment and qualifications of Engineer.
- 150. Office to be provided.
- 151. Oath of office.
- 152. Bond.
- 153. Salary and expenses.
- 154. Duties of Engineer.
- 154a. Examination of plans for dams.

Section

- 155. Inspection of dams.
- 156. Same.
- 157. Duty to supply information.
- 158. Attorney General to advise Engineer.
- 159. Engineer to make report.
- 160. Additional duties of Engineer.

Appointment and Qualifications of Engineer.

Sec. 149. There shall be appointed by the Governor, by and with the advice and consent of the Senate, a State Engineer, who shall hold his office for the term of four years, and until his successor is appointed and qualified. No person shall be appointed as such State

Engineer who is not known to have such theoretical and practical qualifications as shall fit him for the position. The Governor may remove such State Engineer for cause, and, in case of such removal, or in case of death or resignation, appoint a successor.

Historical: Laws 1899, 282, Sec. 1; | omitting the words "as soon as may be
re-enacting Laws 1895, 215, Sec. 1. | after the passage of this act."

Office to Be Provided.

Sec. 150. Such State Engineer shall have his office at the State Capitol in an office to be provided for him by the Secretary of State.

Historical: Laws 1899, 282, Sec. 2;
re-enacting Laws 1899, 215, Sec. 2.

Oath of Office.

Sec. 151. Before entering upon the duties of his office, said State Engineer shall take and subscribe an oath before some duly authorized officer to faithfully perform the duties of his office, and shall file such oath with the Secretary of State.

Historical: Laws 1899, 282, Sec. 3;
re-enacting Laws 1895, 215, Sec. 3.

Bond.

Sec. 152. Before entering upon the duties of his office, said State Engineer shall file with the Secretary of State an official bond in the penal sum of thirty thousand dollars, with not less than two sureties to be approved by the Governor, and conditioned upon the faithful discharge of his duties and for delivery to his successor of all property belonging to the State then in his possession or control.

Historical: Laws 1899, 282, Sec. 4;
re-enacting Laws 1895, 215, Sec. 4.

Salary and Expenses.

Sec. 153. Said State Engineer shall receive a salary of two thousand five hundred dollars per year payable monthly by the State Treasurer upon warrants drawn by the State Auditor, together with his actual expenses, as shown by an itemized bill, necessarily incurred when called away from the State capital in the discharge of his duties, in a sum not to exceed one thousand dollars per annum.

Historical: Laws 1895, 215, Sec. 5;
re-enacted Laws 1899, 282, Sec. 5;
amended Laws 1907, 311, Sec. 1.

Duties of Engineer.

Sec. 154. The State Engineer shall make or cause to be made careful measurements of the flow in cubic feet per second of the various streams in the State whose waters are, or are likely to be, appropriated and used, through that part of the season which he may deem necessary or expedient, to afford information for irrigating purposes, commencing with those streams most used for irrigation. He shall collect facts and make surveys to ascertain suitable locations for reservoirs upon streams where such reservoirs may be possible and beneficial, and shall, as far as possible, determine the cost of constructing such reservoirs, and all other facts possible in regard to

quantity of water possible to be stored, the character and extent of land that may be reclaimed by the water from such reservoirs, together with all other information possible that may bear upon the subject. He shall become familiar with the waterways and irrigable land in the State and the needs of the State as to irrigation matters, and all records of any such information shall be the property of the State and open to public inspection. He shall keep full and complete records of all measurements of streams, surveys, examinations or other valuable information that may come into his possession concerning any of the duties of his office, and shall furnish reasonable information in regard to such measurements or surveys to the newspapers of the State upon proper request.

Historical: Laws 1899, 282, Sec. 6;
re-enacting Laws 1895, 215, Sec. 7.

Examination of Plans for Dams.

Sec. 154a. Any person, association or corporation who shall desire to construct any dam or dyke, for the purpose of storing or appropriating or diverting any of the waters of this State, when the same is to be more than ten feet in height, except as otherwise in this chapter provided, shall submit duplicate plans, drawings and specifications of the proposed work to the State Engineer who shall, as speedily as possible and within forty-five days, examine such plans, drawings and specifications, and, if he approve them, he shall affix his approval thereto, and return one copy of each such plan, drawing of specification, with his approval, to the party or parties proposing to construct the works. If the State Engineer shall disapprove of such plans, drawings or specifications, he shall return the same with his written objections thereto and suggestions of changes, to the party or parties filing the same: *Provided*, Where said dam or dyke is, in the opinion of said Engineer, not of sufficient importance to have the provisions of this section apply to such dam or dyke, then said Engineer shall have power, upon written application, to suspend the provisions of this section in regard to such dam or dyke.

In cases of works of great importance, especially where life or property would be endangered by the failure of such works, the State Engineer may require excavations to be made to determine the character of the foundation, and require a statement of the facts in the case to be filed in his office before approving such plans, drawings or specifications; or he may, if he deems the public interest demands, visit the locality of such proposed works before approval of said plans, drawings or specifications; and no rights of any kind under the laws of this State shall be deemed to be obtained, where the proposed works, as in this section provided, have not been approved by the State Engineer.

Whenever any party or parties feel themselves aggrieved by the determination of the State Engineer in refusing to approve any plan or specification as mentioned in this section, then such party or parties may have an appeal to the courts.

Historical: Laws 1899, 282, Secs. 7,
8; re-enacting Laws 1895, 215, Secs. 8, 9.

Inspection of Dams.

Sec. 155. The State Engineer shall inspect, or cause to be inspected, as often as he thinks advisable, every dam or embankment used for holding water in this State, where the same is more than twenty feet in height; and if after any such inspection such dam or embankment, in the opinion of the State Engineer, is unsafe, and life or property liable to be endangered by reason thereof, he shall order the owner or owners to repair the same so as to make it safe. If such owner or owners shall neglect or refuse to repair the same after a reasonable notice to that effect has been given in writing by the State Engineer, the said State Engineer shall report the facts in the case to the Judge of the District Court of the district in which such dam or embankment is situated, who shall, after hearing such facts, if he deem it necessary for the public welfare, order the water master of the district in which such dam or embankment is situated, if there be one, if not, the sheriff of the county, to draw off such water from behind such dam or embankment and to keep said water drawn off till such time as the orders of the State Engineer shall be complied with: *Provided*, That when great damage would result to those depending upon such dam or reservoir or embankment for irrigation if such withdrawal of water were made, and when such impending danger to life and property can be prevented at reasonable expense without such withdrawal being first made, the State Engineer shall make an estimate of the cost of such necessary repair and report the same to the District Judge, who shall, if he deem it necessary for the public welfare, order the board of county commissioners of the county in which said works are situated to make, under the direction of the State Engineer, such repairs as are recommended by said Engineer, and to pay for the same by warrants drawn on the current expense fund of the county. The county auditor and recorder shall immediately present a bill of the amount of such expenses to the person or persons owning or controlling such dam or embankment, and unless the same is paid within three days from the presentation of said bill, or as much as shall not be so paid, shall thereafter become a lien upon the said dam or reservoir embankment, and other irrigation works appurtenant thereto, which amount shall be added to the taxes against such property and shall be collected in the manner provided by law for the collection of other taxes.

Historical: Laws 1895, 215, Sec. 10;
re-enacted Laws 1899, 282, Sec. 9;
amended Laws 1901, 191, Sec. 5.

Same.

Sec. 156. If any person or persons shall report in writing to the State Engineer that any dam or embankment, used for holding water, is unsafe and endangering life or property, then it shall be the duty of said State Engineer to inspect, or cause to be inspected, such dam or embankment as soon as possible, and, if he considers it unsafe, to proceed as provided in the preceding section.

Historical: Laws 1899, 282, Sec. 10,
re-enacting Laws 1895, 215, Sec. 11.

Duty to Supply Information.

Sec. 157. The State Engineer shall, free of charge, give any information desired by any person as to the proper method of measuring water, or of constructing an apparatus for such measurement, upon proper application being made; and shall give special instructions to all water masters as to measurement of water so as to secure a just distribution of the same.

Historical: Laws 1899, 282, Sec. 11;
re-enacting Laws 1895, 215, Sec. 12. .

Attorney General to Advise Engineer.

Sec. 158. The State Engineer may require, and shall receive, from the Attorney General of the State, advice upon any question of public interest arising in the performance of his duties under this chapter, which advice shall be in writing when so desired by said Engineer.

Historical: Laws 1899, 282, Sec. 12;
re-enacting Laws 1895, 215, Sec. 13.

Engineer to Make Report.

Sec. 159. The State Engineer shall make and render to the Governor, biennially, or oftener, if required, full and true reports of his work performed by virtue of his office, which reports shall contain any recommendations he may have to make in reference to legislation affecting his office, or in reference to matters of interest in regard to irrigation that his experience and information may cause him to make.

Historical: Laws 1899, 282, Sec. 13;
re-enacting Laws 1895, 215, Sec. 14.

Cross Reference: Reports of officers: Sec. 279.

Additional Duties of Engineer.

Sec. 160. In addition to the duties prescribed in this chapter, the State Engineer shall perform such other professional duties as may be required of him by the Governor, and shall give advice on any matters of a professional nature, when called upon by the Governor to do so; and shall prepare all maps required for the use of the Board of Land Commissioners.

Historical: Laws 1899, 282, Sec. 14;
re-enacting Laws 1895, 215, Sec. 15.

Cross Reference: Member of State Highway Commission: Sec. 61; of State Board of Health: Sec. 1080; president of Board of Irrigation: Sec. 3273; is chairman of Board of Examining Surveyors: Sec. 1401.

To inspect measuring devices and to furnish instructions as to their use: Sec. 3286. To furnish plans for measuring devices: Sec. 3282. To devise system for measurement and distribution of water: Sec. 3241.

To report on proposed construction work of irrigation district: Sec. 2396.

Plans of reservoir dams and embankments to be filed in Engineer's office: Sec. 1635. Examinations of plans for dams and dykes: Sec. 3256.

To examine plan and report on proposed irrigation district: Sec. 2374.

Examination of diversion works preparatory to issuing license: Sec. 3261. Issuance of license: Sec. 3262. Examination, report and issuance of certificate on completion of diversion works. Secs. 3258, 3259.

Arbitration of disputes between ditch owners and water users as to delivery of water: Sec. 3288.

Considerations involved in the issuance of licenses: Sec. 3266.

Issuance of certificate of transfer of water: Sec. 3265.

Filing reports of water masters: Sec. 3276.

Supervision of water commissioners: Sec. 3270.

Filing fee with application for permit for appropriation of water: Sec. 3253.

Duties with respect to Carey Act land: Secs. 1615-1627.

Cancellation of appropriation permits pursuant to contest: Sec. 3257.

Issuance of amended permits for appropriation of water: Sec. 3255.

Issuance of permits for appropriation of water: Sec. 3254.

Record of applications for appropriation permits: Sec. 3253.

To report on advisability of consolidating irrigating districts: Sec. 2438.

To give advice to directors of irrigation districts: Sec. 2393.

To make examination respecting State lands included within irrigation districts: Sec. 2439.

Examination of and mapping the streams of the State: Sec. 3267.

Fees for issuing certificates, examining ditches and making copies of papers: Sec. 3264. For issuing certificate of transfer: Sec. 3265.

CHAPTER 11.

INSURANCE COMMISSIONER AND EXAMINER.

Article	Article
1. Duties as Commissioner.	2. Duties as Examiner.

ARTICLE 1.

DUTIES AS COMMISSIONER.

Section	Section
161. Appointment and qualifications.	166. Disqualifications.
162. Office.	167. Salary.
163. Oath.	168. General duties.
164. Bond.	169. Reports.
165. Seal.	

Appointment and Qualifications.

Sec. 161. There shall be appointed by the Governor, by and with the advice and consent of the Senate, an Insurance Commissioner, who shall hold his office for two years and until his successor is appointed and qualified. No person shall be appointed as such Commissioner who is not a citizen of the State and who is not experienced in matters of insurance. The Governor may remove such Commissioner for cause, and in case of such removal, or in case of death or resignation, appoint a successor.

Historical: Laws 1901, 165, Sec. 1,
omitting the opening words "as soon

as may be after the passage of this
act."

Office.

Sec. 162. The Insurance Commissioner shall have his office at the State Capitol in an office provided for him by the Secretary of State.

Historical: Laws 1901, 165, Sec. 2.

Oath.

Sec. 163. Before entering upon the duties of his office said Commissioner shall take and subscribe an oath, before some duly authorized officer, to faithfully perform the duties of his office, and shall file such oath with the Secretary of State.

Historical: Laws 1901, 165, Sec. 3.

Bond.

Sec. 164. Before entering upon the duties of his office said Com-

missioner shall file with the Secretary of State an official bond in the penal sum of ten thousand dollars, by a fidelity or guaranty company, or a bond with not less than four responsible sureties, to be approved by the Governor, and conditioned upon the faithful discharge of his duties, and for the delivery to his successor of all property belonging to the State then in his possession or control.

Historical: Laws 1901, 165, Sec. 4.

Seal.

Sec. 165. Said Commissioner shall have a seal of office of suitable design copied from the great seal of the State.

Historical: Laws 1901, 165, Sec. 5.

Disqualifications.

Sec. 166. No person who is director, officer or agent of, or directly or indirectly interested in, any insurance company, except as insured, shall be such Commissioner.

Historical: Laws 1901, 165, Sec. 6.

Salary.

Sec. 167. Said Insurance Commissioner shall receive a salary of twenty-four hundred dollars per year, payable quarterly by the State Treasurer out of the general fund upon warrants drawn by the State Auditor. Said Insurance Commissioner shall also be allowed not to exceed eighteen hundred dollars per annum, payable in the same manner as his own salary, for a deputy commissioner. Said Insurance Commissioner shall also be allowed not to exceed sixteen hundred and forty-five dollars per annum for additional clerk hire and office expenses.

Historical: Laws 1901, 165, Sec. 7;
amended Laws 1905, 255, Sec. 1;
amended Laws 1907, 557, Sec. 1.

General Duties.

Sec. 168. The Insurance Commissioner shall be charged with the execution of the laws relating to insurance and insurance companies doing business in this State, and he shall do and perform such other duties as may be required of him by law.

Historical: Laws 1901, 165, Sec. 8.

Cross Reference: The Insurance law, and the duties of the Commissioner with reference thereto, is found in the

Civil Code, Title 4, Chs. 7-10, Secs. 2855-2937. Duties with respect to surety companies: Secs. 2938-2944.

Reports.

Sec. 169. It shall be the duty of the Commissioner to make such reports of the business of his office and the information therein collected and preserved as the Governor may require, and all such reports shall be, by the Governor, laid before the Legislature at its next session after they shall have been made and printed.

Historical: Laws 1901, 165, Sec. 9.
Cross Reference: Reports to be de-

livered to Secretary of State on or before December 1st: Sec. 279.

ARTICLE 2.
DUTIES AS EXAMINER.

Section		Section	
170.	Insurance Commissioner is State Examiner.	180	Refusal to make returns a felony.
171.	Inventory of State Property.	181	Rendering false statements is perjury.
172.	Supervision of accounts.	182.	Obstruction of Examiner a felony.
173.	Report as to bondsmen.	183.	Examiner may issue subpoenas: Refusal to furnish information.
174.	Examination of State and county offices.	184.	Annual report of Examiner.
175.	Inspection of securities held by county officers.	185.	Examiner to receive no fee.
176.	Report of official neglect.	186.	Duty of Attorney General and prosecuting attorneys.
177.	Report to Governor: Suspension of delinquent official.	187.	Default of State Treasurer.
178.	Officers to assist Examiner.	188.	Default of county treasurer.
179.	Examination of accounts.		

Note: This article follows in a general way the North Dakota law, but not closely enough to admit of literal comparison. See Rev. Codes, North Dakota, 1899, Secs. 136 et seq.

Insurance Commissioner Is State Examiner.

Sec. 170. The State Insurance Commissioner is hereby constituted, ex-officio, State Examiner. As such he shall give bond to the State of Idaho, to be approved by the Governor and filed with the Secretary of State, in the sum of ten thousand dollars. He shall be allowed no salary as such Examiner, but shall be allowed his actual expenses, to be audited by the State Board of Examiners and paid as other salaries and expenses of other State officers are paid.

Historical: Laws 1905, 386, Sec. 1.

Inventory of State Property.

Sec. 171. It is hereby made the duty of the State Examiner to keep an exact and true inventory of all chattel property belonging to the State, which inventory shall be recorded in a permanent record to be kept for that purpose, showing a description of the property, condition, for what used, where located and its cost, and said inventory shall annually be revised on the 31st day of December.

Historical: Laws 1905, 386, Sec. 2.

Supervision of Accounts.

Sec. 172. He shall order and enforce a correct, and, as far as practicable, uniform system of bookkeeping by State and county officers, so as to afford a suitable check on their mutual action, and insure the safety and a thorough supervision of the funds of the State and of the counties therein. He shall have full power to expose false or erroneous systems of accounting, and when necessary shall instruct State and county officers in the proper mode of keeping such accounts.

Historical: Laws 1905, 386, Sec. 3.

Report as to Bondsmen.

Sec. 173. He shall ascertain the character and financial standing of all present and proposed bondsmen of State and county officers.

He shall, in the case of county officers, report to the board of county commissioners, and to the Governor, and in case of State officers, he shall report to the Governor, the knowledge so obtained.

Historical: Laws 1905, 386, Sec. 4.

Examination of State and County Officers.

Sec. 174. He shall require of treasurers of counties, from time to time, as often as he shall deem necessary, a verified and complete statement of their accounts. He shall personally, without notice to the officers and at irregular intervals, visit State officers at least twice in each year, and county officers at least once in each year, and at such time shall make a thorough examination of the books, accounts and vouchers of said officers. He shall ascertain in detail the various items of receipts and expenditures, and submit a report to the proper authority thereof.

Historical: Laws 1905, 386, Sec. 5.

Inspection of Securities Held by County Officers.

Sec. 175. He shall inspect and verify the character and amount of any and all assets and securities held by county officers on public account. He shall ascertain the character and amount of any commission, fee or other charges for services exacted by such officers without warrant of law.

Historical: Laws 1905, 386, Sec. 6.

Report of Official Neglect.

Sec. 176. He shall report to the Attorney General or prosecuting attorney, the refusal or neglect of county officers to obey his instructions. The Attorney General, in case of State officers, and the prosecuting attorney, in case of county or municipal officers, shall promptly take action to enforce a compliance with such instructions of the State Examiner.

Historical: Laws 1905, 386, Sec. 7.

Report to Governor: Suspension of Delinquent Official.

Sec. 177. He shall report to the Governor the result of his examination, as well as any failure of duty of any public official, as often as he thinks it may be required by public interest. The Governor may cause the result of any examination, made by the State Examiner, to be made public, or, at his discretion, may take such action for the public security as the exigency may demand. He may, if he deem the public interest to require it, suspend any officer from further performance of duty until the examination be had, or such security be obtained as may be demanded for the prompt protection of public funds.

Historical: Laws 1905, 386, Sec. 8.

Officers to Assist Examiner.

Sec. 178. To enable the State Examiner to properly perform the services herein required of him, the county commissioners and officers of the several counties, and State Treasurer and Auditor, and all

other county and State officers, shall afford all reasonable and needed facilities to the State Examiner. All officers and employes of the counties, herein referred to, shall make returns and exhibits to the State Examiner, under oath, in such form, and at such time or times, as he shall prescribe.

Historical: Laws 1905, 386, Sec. 9.

Examination of Accounts.

Sec. 179. He may examine any of the books, papers, accounts, bills, vouchers or other documents or property of any or all of the county and state officers, and custodians of county and State funds. He may examine, under oath, county and State officers, and the custodians of county and State funds aforesaid.

Historical: Laws 1905, 386, Sec. 10.

Refusal to Make Returns a Felony.

Sec. 180. Each and every person required herein to make returns and exhibits to the State Examiner, who shall refuse or neglect to make such returns or exhibits, or who shall refuse to give such information required by the State Examiner, shall be guilty of felony, and shall be punished by a fine not exceeding five thousand dollars, or imprisonment in the Penitentiary not more than five years, or both.

Historical: Laws 1905, 386, Sec. 11.

Rendering False Statements Is Perjury.

Sec. 181. Any person making any exhibit, or giving information, as herein required, or making any statement under this article, on oath, who shall knowingly swear falsely concerning the same, shall be guilty of perjury, and shall be punished in the manner prescribed by law for the punishment of perjury.

Historical: Laws 1905, 386, Sec. 12.

Cross Reference: Punishment for perjury: Sec. 6486.

Obstruction of Examiner a Felony.

Sec. 182. Any person who shall wilfully obstruct or mislead the State Examiner in the execution of his duties as by this chapter prescribed, shall be guilty of felony, and upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or imprisonment in the Penitentiary not more than five years, or both.

Historical: Laws 1905, 386, Sec. 13.

Examiner May Issue Subpoenas: Refusal to Furnish Information.

Sec. 183. The State Examiner may issue subpoenas and administer oaths, in the same manner, with the same power to enforce obedience thereof in the performance of his said duties, as belongs and pertains to courts of law in this State. Any person refusing access to the State Examiner to any such books or papers, or officer, agent, clerk, employee or other person aforesaid, or who shall obstruct such access, or who shall refuse to furnish any required information,

or who shall in any manner hinder the thorough examination required by this article, of the officers or of the books, accounts, papers and finances pertaining to the county and State officers aforesaid, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the State Penitentiary for a period not exceeding one year, or both.

Historical: Laws 1905, 386, Sec. 14.

Annual Report of Examiner.

Sec. 184. The State Examiner shall make an annual written report to the Governor of his various official proceedings. He shall embody therein an abstract of the condition and statistics of the several county and State finances as ascertained by him. The reports hereinbefore required to be made to the Governor shall be printed when ordered by the Legislature.

Historical: Laws 1905, 386, Sec. 15.

Cross Reference: Reports of officers:
Sec. 279.

Examiner to Receive No Fee.

Sec. 185. If the State Examiner shall, directly or indirectly, bargain for or receive any fee, compensation or reward, other than is provided by this article, for the doing or refraining to do his duty, as required by this article, he shall be guilty of a felony, and upon conviction thereof, shall be fined not exceeding five thousand dollars, or imprisonment in the State Penitentiary not more than five years, or both.

Historical: Laws 1905, 386, Sec. 16.

Duty of Attorney General and Prosecuting Attorneys.

Sec. 186. The Attorney General, or prosecuting attorney, shall when called upon by the State Examiner, aid him in any investigation or matter; giving legal advice, and shall supervise the prosecution of all offenders under the provisions of this article.

Historical: Laws 1905, 386, Sec. 17.

Default of State Treasurer.

Sec. 187. If, at any time, upon an examination being made by the State Examiner of the books and accounts of the State Treasurer, and the funds under his control, it shall be found that said State Treasurer is a defaulter, it shall be the duty of the State Examiner to at once report such fact to the Governor, who shall have authority upon receiving such report to at once suspend the Treasurer, and to appoint a Treasurer temporarily, and to continue such suspension until such defalcation shall have been made good: *Provided, however,* That in case it shall appear to the satisfaction of the Governor that such defalcation cannot be made good by the State Treasurer, he shall have authority to declare said office vacant, and fill the same by appointment as in cases of other vacancies.

Historical: Laws 1905, 386, Sec. 18.

Default of County Treasurer.

Sec. 188. If, at any time, the State Examiner, upon an examination of the books and accounts of any treasurer of any county, and the funds under the control, or in the custody of, such treasurer, as authorized by law, shall find that any such treasurer is a defaulter, he shall at once report such defalcation or inability of such treasurer to the board of county commissioners of the county interested, which board of county commissioners shall, upon receiving such notice, from the Examiner, have authority to suspend such treasurer, and to appoint a treasurer temporarily, and to continue such suspension until such defalcation shall have been made good: *Provided, however,* That such board of county commissioners shall have power, in case it shall appear to their satisfaction that such defalcation cannot be made good, to declare said office vacant, and to fill the same by appointment as required by law in case of vacancies arising in any such office.

Historical: Laws 1905, 386, Sec. 19.

CHAPTER 12.**BANK COMMISSIONER.****Section**

189. Appointment and qualifications:
Vacancy.
190. Clerical assistance.
191. Bond and oath.

Section

192. Salary.
193. Seal of Commissioner.
194. Duties of Commissioner.

Appointment and Qualifications: Vacancy.

Sec. 189. The Governor shall appoint, by and with the advice and consent of the Senate, a Bank Commissioner for the State of Idaho, whose term of office shall be four years, unless sooner removed for cause, and until his successor is appointed and qualified. No person shall be appointed to such office who shall not have had at least five years' practical experience in the banking business, or shall have served for a like period in the banking department of this or some other State; nor shall an officer or employee of any bank in the State of Idaho, or person interested as owner or stockholder thereof, be eligible for such office. If a vacancy shall occur in the office of Bank Commissioner by death, resignation or otherwise, the same shall be filled by appointment of the Governor, and such appointee, or any person appointed to such position when the Legislature is not in session, shall hold office until the first day of the next ensuing session of the Legislature.

Historical: Laws 1905, 175, Secs. 1, 2.

Clerical Assistance.

Sec. 190. Every Bank Commissioner, with the approval of the State Board of Examiners, shall have the right to employ such clerical assistance as shall be required in the conduct of his office.

Historical: Laws 1905, 175, Sec. 3.

Bond and Oath.

Sec. 191. The Bank Commissioner shall, before entering upon the duties of his office, take and subscribe an oath to faithfully discharge the duties of such office, and shall execute to the State of Idaho a bond in the sum of fifty thousand dollars, in some surety company authorized to do business in this State, conditioned that he will faithfully and impartially discharge the duties of his office, and pay over to the persons entitled by law to receive it all money coming into his hands by virtue of his office, and conditioned further for the payment of any and all damages and costs that may be adjudged against him under the provisions of this chapter and Chapter 13, of Title 4, of the Civil Code, the cost of which bond shall be a charge against the State, to be audited and allowed as other claims, and which bond shall be approved by the Attorney General.

Historical: Laws 1905, 175, Sec. 4. "This chapter and Chapter 13 of Title 4 of the Civil Code" inserted for "this

act." The chapter of the Civil Code referred to is the one relating to banking corporations (Secs. 2968-3010).

Salary.

Sec. 192. The Bank Commissioner shall receive a salary of two thousand four hundred dollars a year, together with his actual traveling expenses while engaged in bank examination, to be audited and allowed as other claims against the State, which examination must be conducted personally by the Bank Commissioner.

Historical: Laws 1905, 175, Sec. 4.

Seal of Commissioner.

Sec. 193. The Bank Commissioner, with the approval of the Governor, shall devise a seal with suitable inscription for his office, a description of which, with a certificate of approval by the Governor, shall be filed in the office of the Secretary of State, with an impression thereof, which shall thereupon be and become the seal of office of the Bank Commissioner. Every certificate, assignment and conveyance, executed by said Bank Commissioner in pursuance of the authority conferred upon him by law and sealed with the seal of office, shall be received as evidence and recorded in the proper recording offices, in the same manner and with like effect as a deed regularly acknowledged as required by law; and all copies of papers in the office of said Commissioner, certified by him and authenticated by his seal, shall be received in evidence equally and in like manner as the originals.

Historical: Laws 1905, 175, Sec. 6.

Duties of Commissioner.

Sec. 194. The duties of the Commissioner are those prescribed by Chapter 13, of Title 4, of the Civil Code.

Historical: New section by Commissioner. The preceding sections are taken from the same act as the chapter of the Civil Code above referred to, and relate only to the creation of the office of the Bank Commissioner. It was thought best to leave the sections

prescribing his duties with the banking law, which it is his province to enforce.

Cross Reference: The chapter above referred to is found in Secs. 2968-3010 of the Civil Code.

CHAPTER 13.

FISH AND GAME WARDEN.

Section	Section
195. Appointment, bond and duties.	198. Extermination of wild animals.
196. Deputies and assistants.	
197. Salaries of Warden, deputies and assistants.	

Appointment, Bond and Duties.

Sec. 195. The Governor shall appoint a suitable person to serve as State Fish and Game Warden, whose duty it shall be to protect the fish and game of this state, and to enforce the laws relating thereto. The State Fish and Game Warden shall hold his office for the term of two years or until his successor is appointed and qualified. Before entering upon his duties, the State Fish and Game Warden shall execute a bond to the State of Idaho, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duties, and his bond shall be approved by the Governor. The Governor shall have power, at any time, to remove the State Fish and Game Warden, at pleasure, for misconduct or neglect of his duties, and the Governor shall be the exclusive judge of misconduct or neglect of duties and shall, upon removal, appoint a successor.

The State Game Warden is hereby authorized to arrest, without warrant, any person or persons found violating any of the provisions of the fish and game laws, when detected in the act, or found with fish or game in their possession, at the time of their arrest. The State Fish and Game Warden shall be an active executive officer, and shall at all times take the field in person in the performance of his duties, when possible. He shall personally supervise the protection of all game and fish protected by the Penal Code, and be energetic in the detection and punishment of the violators of the fish and game laws. He shall make quarterly report to the Governor of his doings, beginning with the first day of April, and shall keep the Governor informed of his whereabouts. He shall make a biennial report to the Governor and Legislature of the doings and conditions of his office, which report shall be made during the first week of the regular session of the Legislature.

It shall be lawful for the State Fish and Game Warden, or any person appointed by him in writing so to do, to take fish and game of any kind, dead or alive, or in any manner, under the direction of the State Fish and Game Warden, for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes, deemed by him to be in the interest of the fish and game industry of the State. He shall make a detailed report of his official transactions, including the number and kinds of fish distributed, and the locality and names of streams, ponds or lakes where the same have been placed, and submit such report to the Legislature during the first week of its ensuing regular session.

Historical: Laws 1905, 258, Sec. 1; amended Laws 1907, 112, Sec. 1.	laws are found in the Penal Code. Secs. 7180-7203. Warden to erect and maintain a fish hatchery: Sec. 857.
Cross Reference: The fish and game	

Deputies and Assistants.

Sec. 196. The State Fish and Game Warden shall have power to appoint such deputies as are necessary in the various counties of this State to properly enforce the laws; and he is hereby authorized to appoint one chief deputy and two assistants, and one or more deputies, as the emergency may demand, in any county of this State, whenever he shall receive from such county a petition signed by ten or more resident tax payers, asking for the appointment of such deputy game warden. Such chief deputy and assistants shall each execute a bond to the State of Idaho in the penal sum of three thousand dollars, conditioned for the faithful performance of their duties, and such other deputy wardens shall execute a bond to the State of Idaho in the penal sum of five hundred dollars, conditioned for the faithful performance of their duties, and they shall have the same power to make arrests as the State Fish and Game Warden. Their commissions may be revoked at any time by the State Fish and Game Warden. The State Fish and Game Warden shall file with the Governor a list of all deputy game wardens appointed by him. He shall have further power to appoint one clerk, who shall have charge of the office and perform the clerical duties thereof. Such clerk shall execute a bond to the State of Idaho in the penal sum of three thousand dollars, conditioned for the faithful performance of his duties.

Historical: Laws 1905, 258, Sec. 2;
amended Laws 1907, 112, Sec. 2.

Salaries of Warden, Deputies and Assistants.

Sec. 197. The State Fish and Game Warden shall receive as full compensation for salary the sum of eighteen hundred dollars per annum, and one thousand dollars per annum for traveling expenses. The chief deputy shall receive as compensation twelve hundred dollars per annum and shall be allowed actual and necessary traveling expenses not to exceed six hundred dollars per annum. Each assistant shall receive one thousand dollars per annum, and actual and necessary traveling expenses not to exceed six hundred dollars. The clerk to the State Fish and Game Warden shall receive a salary of one thousand dollars per annum as full compensation for his services. The State Fish and Game Warden, chief deputy and two assistants and the clerk shall be paid monthly on the first of each month out of the public treasury. And the chief deputy, two assistants and the clerk shall be paid upon their sworn statements, which accounts shall be approved by the State Game Warden. All other deputy wardens shall each receive as compensation the sum of three dollars per day for each day actually employed, but shall not be entitled to receive any traveling or other expenses, except when sent out of his district, and such expenses shall be subject to approval by the State Game Warden, and shall not receive pay for more than one hundred and fifty days in one year; such compensation to be paid out of the public treasury upon the sworn account of the deputy, which account shall be approved by the State Fish and Game Warden, and forwarded to the State Auditor: *Provided*, That as soon as sufficient funds are accumulated in the State fish and game fund in

the hands of the State Treasurer, the salary of the State Game Warden, and the salaries of the deputy wardens and clerk shall be paid out of that fund.

Historical: Laws 1905, 258, Sec. 23;
amended Laws 1907, 112, Sec. 13.

Extermination of Wild Animals.

Sec. 198. It is hereby made the duty of the State Game Warden to devise and put into operation such methods and means as will best secure and attain the extermination of wolves, coyotes, wildcats, cougars and such other wild animals as are in the habit of preying upon such game animals, birds and fowls as are protected by the game laws of this State. The State Game Warden shall keep an accurate account of all animals destroyed under the provisions of this section, and make report thereof at the same time and manner as in the case of his other official acts, and shall, where practicable, skin and preserve and dispose of all hides and furs of value, the proceeds of which shall be accounted for, and paid into the State Treasury and credited to the fish and game fund.

Historical: Laws 1907, 301, Secs. 1, 2, omitting the appropriation clause | of Section 1. Existing appropriations are saved by Section 17 of these Codes.

CHAPTER 14.
INSPECTOR OF MINES.

Section	Section
199. Election, term of office and salary.	205 Neglect of mine owner: Duty of Attorney General.
200. Disqualifications: Oath of Inspector.	206. Appointment of deputies.
201. Duties in general.	207. Duty of Inspector in case of accidents.
202. Examination of mines.	208. Duties of Deputies.
203. Office: Records: Reports to Inspector.	209. Report of Inspector.
204. Complaints to Inspector: Duties of Inspector.	

Note: This Chapter follows in a general way the Montana law. See Montana Codes, 1895, Pol. Code, Secs. 580-590.

Election, Term of Office and Salary.

Sec. 199. The office of Inspector of Mines for the State of Idaho is hereby created, the same to be filled biennially at the general election by the qualified electors of the State as other offices. The Inspector of Mines shall hold his office for the term of two years and until his successor is elected and qualified. Before entering upon the discharge of his duties as such Inspector of Mines, he shall file an official bond in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, in form and manner as other official bonds of State officers. The Inspector of Mines shall receive as full compensation for his services a salary of twenty-four hundred dollars per annum and his actual and necessary traveling expenses when traveling in the discharge of his official duties, not to exceed eighteen hundred dollars per annum, and all necessary expenses for clerk hire, postage, stationery, printing, the

compensation of deputies and other office expenses, not to exceed twelve hundred dollars per annum; and such compensation and expenses shall be paid as the salary and expenses of other State officers are paid.

Historical: Laws 1899, 221, Secs. 1, 2, 13; re-enacting Laws 1895, 160, Secs. 1, 2, 13. Sec. 2 was amended by an act of the 9th session of the State Legislature (H. B. No. 230) which, through some oversight, is omitted from the 1907 Session Laws. The language of the foregoing section follows

the amendatory act. The three sections are re-written in combination, the order of phraseology being slightly changed.

Cross Reference: Member State Highway Commission: Sec. 1061. Salary: Sec. 274.

Disqualifications: Oath of Inspector.

Sec. 200. The Inspector of Mines shall not, at the time of his appointment or any time during his term of office, be an officer, director, or employee in or of any mining corporation in this State, or in or of any milling corporation in the State engaged in the business of smelting or reducing ores. Such Inspector shall devote his whole time to the duties of his office and shall take and subscribe to the following oath:

State of Idaho, County of —ss.

I, of County, do solemnly swear that I will perform each and every duty required of me as Inspector of Mines for the State of Idaho; that I will, at all times while acting in my official capacity, fulfill the duties of such office according to law, and to the best of my skill and understanding; that I will never at any time while holding the office of Inspector of Mines disclose to any one directly or indirectly, under any circumstances, any information relative to ore bodies, chutes, or deposits of ore, or the location, course or character of underground workings, or give my opinion founded on any examination made in the performance of my official duties relative to the value of any mine or mining property, unless by permission of the person or persons in charge of the same; to all of which I pledge my sacred honor. So help me God.

Nothing in said oath, however, shall be construed to prevent such Mining Inspector from making full and complete statistical reports as required by law.

Historical: Laws 1899, 221, Sec. 3; re-enacting Laws 1893, 152, Sec. 2; amended Laws 1895, 160, Sec. 2.

Duties in General.

Sec. 201. It shall be the duty of the Inspector of Mines, at least once each year, to visit in person each mining county in the State of Idaho and examine all such mines therein as, in his judgment, may require examination for the purpose of determining the condition of such mines as to safety, and to collect information and statistics relative to mines and mining and the mineral resources of the State, and to collect, arrange and classify mineral and geological specimens found in this State and to forward the same to the State School of Mines.

Historical: Laws 1899, 221, Sec. 4; re-enacting Laws 1893, 152, Sec. 4; amended Laws 1895, 160, Sec. 3.

Examination of Mines.

Sec. 202. Said Inspector shall have full power and authority, at all reasonable hours, to enter and examine any and all mines in this State, and shall have the right to enter into any and all mine stopes, levels, winzes, tunnels, shafts, drifts, cross-cuts, workings and machinery, for the purpose of such examination; and the owner, lessor, lessee, agent, manager, or other person in charge of such mine or mines, shall render the Inspector such assistance as may be required by the Inspector to enable him to make a full, thorough and complete examination of each and every part of such mine or mines, and whenever, as the result of the examination of any mine (whether such examination is made in consequence of a complaint, as hereinafter provided, or otherwise) the Inspector shall find the same to be in an unsafe condition, he shall at once serve, or cause to be served, a written notice upon the owner, lessor, lessee, agent, manager or other person in charge of such mine, stating in detail in what particular or particulars the mine is dangerous or insecure, and shall require all necessary changes to be made, without delay, for the purpose of making said mine safe for the employees therein. Upon the neglect or refusal of any owner, lessor, lessee, agent, manager or other person in charge, so notified to comply with the requirements stated in such notice so served, such owner, lessor, lessee, agent, manager or other person in charge, of such mine shall be deemed guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars, and each day's continuance of such neglect or refusal shall be a separate offense, and in case of any criminal or civil proceeding at law against the party or parties so notified, on account of the loss of life, or bodily injury sustained by any employee subsequent to the service of such notice, and in consequence of a neglect or refusal to obey the Inspector's requirement, a certified copy of the notice served by the Inspector shall be prima facie evidence of the culpable negligence of the party or parties so notified.

Historical: Laws 1899, 221, Sec. 5;
re-enacting Laws 1893, 152, Sec. 5;
amended Laws 1895, 160, Sec. 4.

Office: Records: Reports to Inspector.

Sec. 203. The Inspector of Mines shall be provided with a properly furnished office, at the State House in Boise City, Idaho, in which he shall carefully keep a complete record of all mines examined, showing the date of examination, the condition in which the mines were found, the manner and method of working, the extent to which the laws are obeyed, and what recommendations, if any, were ordered by the Inspector.

It is hereby made the duty of the owner, lessor, lessee, agent, manager or other person in charge of each and every mine, of whatever kind or character, within the State, to forward to the Inspector of Mines at his office, not later than the first day of June in each year, a detailed report showing the character of the mine, the number of men then employed and the estimated maximum number of men to be employed therein during the ensuing year, the method of working such mine and the general condition thereof, and such owner, lessor,

lessee, agent, manager or other person in charge of any mine within the State, must furnish whatever information relative to such mine as the Inspector of Mines may, from time to time, require for his guidance in the proper discharge of his official duties.

Historical: Laws 1899, 221, Sec. 6;
re-enacting Laws 1893, 152, Sec. 6;
amended Laws 1895, 160, Sec. 5.

Complaints to Inspector: Duty of Inspector.

Sec. 204. Whenever the Inspector of Mines shall receive a formal complaint in writing, signed by three or more persons, setting forth that the mine in which they are employed is dangerous in any respect, he shall, in person, visit and examine such mine: *Provided*, Every such formal complaint shall in all cases specifically set forth the nature of the danger existing at the mine and shall describe, with as much certainty as is possible, how much danger, apparent or real, renders such mine dangerous, and shall set forth the time when such danger was first observed, and shall distinctly set forth whether or not any notice of such defect or danger has been given to the complainants, or any one else to their knowledge, to the superintendent or other person in charge of such mine, and if no such complaint has been made to such superintendent or other person in charge, the reason why it has not been made: and *Provided, further*, That all complaints shall be duly verified by the parties complaining, before some officer authorized by law to administer oaths. After such complaint shall have been received by the Inspector of Mines, it shall be the duty of such Inspector to serve a certified copy thereof, but without the names of the complainants, upon the owner, lessor, lessee, agent, manager, or other person in charge, and, as soon as possible after receiving such complaint to visit and examine such mine, and if, from such examination he shall find such complaint to be just, he shall give notice in writing of the danger existing to the owner, lessor, lessee, agent, manager, or other person in charge thereof, and in such notice may, in his discretion, order such mine or workings in which such danger exists, closed, until such danger has been removed. The names of complainants complaining as in this section provided, shall not, under any circumstances, be divulged to any person by said Inspector except such action be necessary in the administration of justice in the courts of the State.

Historical: Laws 1899, 221, Sec. 7;
re-enacting Laws 1893, 152, Sec. 7;
amended Laws 1895, 160, Sec. 6.

Neglect of Mine Owner: Duty of Attorney General.

Sec. 205. It shall be the duty of the Inspector of Mines upon the neglect or refusal of any owner, lessor, lessee, agent, manager, or other person in charge of any mine or working, notified of the unsafe or dangerous condition of his mine, promptly to comply with the requirements of the notice served upon him, to at once notify the Attorney General of such neglect or refusal, and the Attorney General must thereupon immediately commence action in the name of the State against the party so notified for the recovery of the penalty

mentioned in Section 202, in any court of competent jurisdiction, and the amount so recovered shall be paid into the general school fund of the State and constitute a part thereof.

Historical: Laws 1899, 221, Sec. 8;
re-enacting Laws 1893, 152, Sec. 9;
amended Laws 1895, 160, Sec. 8.

Appointment of Deputies.

Sec. 206. With the consent and approval of the Governor, the Inspector of Mines may appoint such deputy inspectors as in his judgment may be necessary. Such deputy inspectors shall be allowed, as full compensation for all services, five dollars per day for each day actually engaged in the performance of their duties.

Historical Laws 1899, 221, Sec. 9;
re-enacting Laws 1895, 160, Sec. 9.

Duty of Inspector in Case of Accidents.

Sec. 207. Whenever a serious or fatal accident shall occur in any mine in the State of Idaho, it shall be the duty of the owner, lessor, lessee, agent, manager or other person in charge thereof, immediately and by the quickest means, to notify the Inspector of Mines or his deputy, as may be most convenient, of such accident; and upon receiving such notice the Inspector or his deputy, or both, shall at once repair to the place of the accident and investigate fully the cause of such accident; and the Inspector or his deputy shall be present at any coroner's inquest held over the remains of any person or persons killed in any such accident, and shall have power at such inquest to examine and cross-examine witnesses, and may have process to compel the attendance of necessary witnesses at such inquest. If the Inspector or deputy inspector cannot be immediately present in case of a fatal or serious accident occurring, it shall be the duty of the owner, lessor, lessee, agent, manager, or other person in charge of the mine in which such accident has occurred, to have statements made and verified by those witnessing such accident (in case no person was present at the time of the accident, then the statement of those first present thereafter shall be taken), which statements shall be verified, and such verified statements shall be placed in the hands of the Inspector or deputy inspector, upon the demand of such officer. Whenever any deputy inspector is present at any coroner's inquest and assists in the examination, he shall at the conclusion thereof, at once prepare and forward to the Inspector a full and detailed report of the accident, giving all information obtainable regarding the same.

Historical: Laws 1899, 221, Sec. 10;
re-enacting Laws 1895, 160, Sec. 10.

Duties of Deputies.

Sec. 208. The duties of deputy inspectors shall only be such as are indicated in the preceding section; that is, to attend and act either with or in place of the Inspector of Mines in cases of accident, at the scene of such accident, and at coroner's inquests, and to make reports.

Historical: Laws 1899, 221, Sec. 11;
re-enacting Laws 1895, 160, Sec. 11.

Report of Inspector.

Sec. 209. The Inspector of Mines shall, on or before the first day of December of each year, file with the Governor of the State a printed report giving:

1. A list of all accidents that have occurred during the year, the nature and cause of the same, together with the persons killed and injured;

2. The number of mines visited or examined during the year; the number of mines in operation; the number of mines idle; the number of men employed; the wages paid, and the nationality of employees;

3. The name and location of each mine in the State, which has been examined and from which the Inspector has received a report as provided in Section 203, and all data possible in regard to the manner of working the same, whether by shaft, tunnel, incline or otherwise; the condition of the hoisting machinery, boilers, whims, engines, cars, buckets, ropes and chains, used in the mines; also the appliances used for the extinguishing of fires; the manner and methods of working and timbering the shafts, drifts, inclines, stopes, winzes, tunnels and up-rises through which persons pass to and fro while engaged in their daily labor; the character of the exits from the mine, the methods of ventilation, and the system of signals used in the mine;

4. The number and character of notices served, together with suggestions and recommendations made, and the manner in which such suggestions and recommendations were complied with;

5. The number of complaints received and actions thereon;

6. The number of prosecutions for neglect or refusal to comply with notices;

7. A summary of the reports received from mine owners and deputy inspectors;

8. A full statement containing all available statistical and other information calculated to exhibit the mineral resources of the State, and to promote the development of the same;

9. Generally, such other information and suggestions as may be deemed advisable.

Historical: Laws 1899, 221, Sec. 12;
re-enacting Laws 1895, 160, Sec. 12.
"On or before the first day of December" inserted in place of "on the first

Monday of December" to conform to
Laws 1903, 149, Sec. 2. (Codes, Sec.
279.)

CHAPTER 15.

OTHER EXECUTIVE OFFICERS AND BOARDS.

Section

210. General reference to other officers and boards.

General Reference to Other Officers and Boards.

Sec. 210. The appointment or constitution, and the organization, powers and duties, of such other State boards and commissions as

are authorized and provided for by law, for the administration of departments of the government, or the supervision, direction and control of the educational, charitable, penal or other institutions, of the State, and the election or appointment, and the powers and duties, of officers and employees working under or in co-operation with such boards or commissions, or independently thereof in the administration of departments or branches of the State government, are provided for in these Codes in the titles, chapters and articles treating of the institutions or departments of government supervised and administered by such boards, commissions, officers or employees.

Historical: New section by Commissioner inserted to preserve the continuity of the text.

Cross Reference: Board of Pardons: Secs. 8248-8264. Board of State Prison Commissioners. Secs. 8460-8469. Board of Land Commissioners: Sec. 1558. Board of Equalization: Sec. 1702. Highway Commission: Sec. 1061. Regents of University: Sec. 486. Trustees of Lewiston Normal School: Sec. 501. Trustees of Albion Normal School: Sec. 517. Trustees of Academy of Idaho: Sec. 546. Commission of Summer Normal Schools: Sec. 533. State Board of Public Instruction: Sec. 558. State Superintendent of Public Instruction: Sec. 565. State Library Commission: Sec. 672. Directors of Insane Asylum: Sec. 751. Directors of North Idaho Insane Asylum: Sec. 786. Trustees of Industrial

Training School: Sec. 806. Trustees of Soldiers' Home: Sec. 794. Trustees of Historical Society: Sec. 848. Live Stock Sanitary Board: Sec. 1153. Board of Health: Sec. 1080. Board of Dairy, Food and Oil Commissioners: Sec. 1114. Board of Horticultural Inspection: Sec. 1310. Grain Commission: Sec. 1478. Board of Medical Examiners: Sec. 1341. Board of Dental Examiners: Sec. 1357. Board of Osteopathic Examination and Registration: Sec. 1366. Board of Examiners in Optometry. Sec. 1374. Board of Pharmacy: Sec. 1385. Board of Examining Surveyors: Sec. 1401. Labor Commission: Sec. 1426. Commissioner of Immigration, Labor and Statistics: Sec. 1418. Librarian of Law Library: Sec. 834. Lumber Inspectors: Sec. 1495.

CHAPTER 16.

OFFICERS OF THE JUDICIAL DEPARTMENT.

- Article
- 1. Judges.
 - 2. Clerk of the Supreme Court.

- Article
- 3. Supreme Court Reporter.
 - 4. Other court officers.

ARTICLE 1.
JUDGES.

Section
211. Cross reference to Judges.

Cross Reference to Judges.

Sec. 211. The election, duties and powers of the Justices of the Supreme Court and Judges of the District Courts are provided for in the Code of Civil Procedure and the Penal Code. Probate judges and justices of the peace are provided for in Title 11, of this Code, and their powers and duties are such as are prescribed by this Code, the Code of Civil Procedure and the Penal Code.

Historical: New section by Commissioner inserted to preserve the continuity of the text.

Cross Reference: Justices of the Supreme Court: Const. Art. 5, Sec. 6; C. C. P. Sec. 3814. District Judges:

Const. Art. 5. Sec. 11; C. C. P. Sec. 3829. Probate Judges: Const. Art. 5, Sec. 21; Pol. Code, Secs. 1989, 1990. Justices of the peace: Const. Art. 5, Sec. 22; Pol. Code, Sec. 2104.

ARTICLE 2.

CLERK OF THE SUPREME COURT.

Section	Section
212. Duties in general.	217. Prohibitions.
213. Fees.	218. May take acknowledgments.
214. Filing papers.	219. Official bond.
215. Responsibility for books and papers.	220. Salary.
216. May administer oaths.	221. Deputy clerks.

Duties in General.

Sec. 212. The Clerk of the Supreme Court must perform such duties as are prescribed in the Penal Code and Code of Civil Procedure, and such duties as may be required of him by the rules and practice of the Court. He must keep his office in the Capitol building.

Historical: Rev. St. 1887, Sec. 260, and first clause of Sec. 263. The remainder of Sec. 263 is repealed by Const. Art. 4, Sec. 18, creating the Board of Examiners.	Cross Reference: Clerk of Supreme Court to be appointed by the Court: Const. Art. 5, Sec. 15. Clerk to report to State Treasurer names of attorneys admitted to practice: Sec. 840.
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California Legislation: Same: Pol. Code 1872, Sec. 750; Deering's Code, ib.; Kerr's Code, ib.

Fees.

Sec. 213. The Clerk of the Supreme Court may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law :

For filing each transcript of record from an inferior court, one dollar; for entering any motion, rule or order, fifty cents; for entering judgment, for each folio, thirty cents; for each certificate given at request, and under seal, fifty cents; for copy of record, or opinion of court, or other paper, for each folio, twenty cents; for entering each cause on calendar, and making copy for bar, fifty cents; for filing each paper, twenty-five cents; for every remittitur or mandate, for each folio, twenty cents; for certificate of admission, as attorneys or counsellors, including seal, oath and order, two dollars; for administering oaths, or affirmations, including jurat, twenty-five cents; for taking and writing out acknowledgments of deeds, or other instruments, for each signature, including seal, fifty cents; for recording opinion of Court, each folio, twenty cents; for issuing any process of Court, including seal, one dollar. .

Historical: Rev. St. 1887, Sec. 262. See 6 Ter. Ses. (1871) 15, Sec. 3.	Pol. Code 1872, Sec. 752; as amended; Deering's Code, ib.; further amended: Kerr's Code, ib.
California Legislation: Different:	

Filing Papers.

Sec. 214. He must file all papers that may be legally lodged with him for that purpose, noting the day, month, and year when so filed.

Historical: Rev. St. 1887, Sec. 264. 2 Ter. Ses. (1864) 423, Sec. 4.

Responsibility for Books and Papers.

Sec. 215. He is responsible for the safe custody and delivery to his successor of all books and papers belonging to his office.

Prohibitions.

Historical: Rev. St. 1887, Sec. 265.
2 Ter. Ses. (1864) 423, Sec. 5.

May Administer Oaths.

Sec. 216. He may administer oaths in every case where an oath is authorized by law.

Historical: Rev. St. 1887, Sec. 266.
2 Ter. Ses. (1864) 423, Sec. 6.

Prohibitions.

Sec. 217. He must not practice as an attorney or counsellor, nor be surety or bail in any case in the court of which he is clerk.

Historical: Rev. St. 1887, Sec. 267.
2 Ter. Ses. (1864) 423, Sec. 7.

May Take Acknowledgments.

Sec. 218. He is authorized to take acknowledgments of deeds and instruments of writing under the seal of his office.

Historical: Rev. St. 1887, Sec. 268.
2 Ter. Ses. (1864) 423, Sec. 8.

Cross Reference: May take acknowledgments: Sec. 3123.

Official Bond.

Sec. 219. The Clerk of the Supreme Court must execute an official bond in the sum of five thousand dollars.

Historical: Rev. St. 1887, Sec. 269.
See 2 Ter. Ses. (1864) 423, Sec. 2.
California Legislation: Same except

“ten” for “five”: Pol. Code 1872, Sec. 757; Deering’s Code, *ib.*; Kerr’s Code, *ib.*

Salary.

Sec. 220. The Clerk of the Court shall receive a salary of two thousand five hundred dollars per annum, payable quarterly out of the State Treasury upon warrants issued by the Auditor. Said salary shall be the only compensation he shall receive for all services required of him, or of any deputy he may appoint, with the exception of the deputy resident at the City of Lewiston, provided for in the next section. Nothing herein contained shall affect the right of the Clerk to receive compensation as reporter of the decisions of the Supreme Court as provided in Section 222.

The Clerk shall, on the first day of January, April, July and October of each year, deliver to the State Auditor a statement, verified by oath, showing the different items of fees received or charged by him, from whom, at what time, and for what services, during the preceding three months, and on the same day he shall pay to the State Treasurer the amount of said fees, who shall give his receipt therefor, and, upon exhibition of said receipt, the Auditor shall draw his warrant upon the Treasury for the amount of salary due.

Historical: This section is a compilation based on Laws 1899, 6, Secs. 4, 5, 6, 7, which re-enact Laws 1890-91, 11, Sec. 3, amended Laws 1893, 63, Sec. 3; Laws 1893, 63, Sec. 2; Laws 1890-91, 11, Sec. 3, amended Laws 1893, 63, Sec. 4; Laws 1890-91, 11, Sec. 7, respectively. The exception of the Lewiston deputy from the salary provision is not found verbatim in the 1899 laws but is based on the fifth

section of that law (see following section). The provision of Sec. 4 of the 1899 law which authorizes the appointment of deputies by the clerk is not germane to that section and is included in Sec. 221. The portion of Sec. 6 of the 1899 laws which requires the clerk to provide furniture, etc., for the Lewiston deputy is obsolete since the enactment of Laws 1903, 42, providing a Supreme Court building located

at the city of Lewiston. The further provisions of this section for the salaries of crier, bailiff, and messenger are found in Sec. 3822." The ex-

ception, from the salary provision, of the clerk's compensation as reporter is based on Laws 1903, 367, Sec. 1, found in Sec. 222 post.

Deputy Clerks.

Sec. 221. The Clerk of the Supreme Court may appoint one or more deputies, and shall appoint a deputy clerk resident at the City of Lewiston, who shall keep his office in the Supreme Court building in said city, and who shall receive as compensation for his services the sum of seventy-five dollars per month, in full payment for all his services as such deputy clerk, to be paid to him monthly by the Treasurer of the State out of any moneys in the Treasury not otherwise appropriated.

Historical: Laws 1899, 6, Sec. 5; reenacting Laws 1893, 63, Sec. 2, as modified by, and combined with, the latter part of Laws 1903, 42, Sec. 12. The words "may appoint one or more deputies" are inserted on the authority of Laws 1899, 6, Sec. 4.

Cross Reference: Lewiston deputy clerk is custodian of Lewiston Law Library: Sec. 841.

ARTICLE 3.

SUPREME COURT REPORTER.

Section

- 222. Clerk to be ex-officio reporter.
- 223. Decisions to be reported.
- 224. Same: How prepared.
- 225. Name of reports.

Section.

- 226. Distribution of reports.
- 227. Contract to print reports.
- 228. Bond of printer.
- 229. Receipt to printer.

Clerk to Be Ex-Officio Reporter.

Sec. 222. The Clerk of the Supreme Court shall be ex-officio reporter of the decisions of the Supreme Court, and shall receive the sum of one hundred dollars per volume for his services in the preparation of the decisions of said court.

Historical: Laws 1903, 367, Sec. 1.

Decisions to Be Reported.

Sec. 223. The reporter of the decisions of the Supreme Court must prepare a report of all decisions of such court not reported in Volume 1, new series.

Historical: Laws 1903, 367, Sec. 2.

Same: How Prepared.

Sec. 224. The decisions shall be prepared for publication by giving the title to each case, a syllabus of the points decided, the names of the counsel appearing in the Supreme Court in the case, and synopsis of the briefs with reference to such standard reports and text books as have a special bearing upon the points decided, and each volume shall contain, at the end thereof, a full and comprehensive index alphabetically arranged, and there shall be prefixed thereto a table of cases decided, a table of cases cited, and a table of statutes and constitutional provisions construed.

Historical: Laws 1903, 367, Sec. 3.

Name of Reports.

Sec. 225. The first volume to be published under the provisions of this article shall be called "Idaho Reports Volume 2," and shall commence with the decisions immediately following those reported in Volume 1, Idaho Reports, new series, published 1882, and all decisions reported in said Volume 2, and subsequent volumes, shall be reported in the order in which the decisions were handed down, chronologically. Said volume and all subsequent volumes shall be uniform in size and amount of matter contained with said Volume 1, Idaho Reports, new series, and the style of type the same and composition shall be similar, and the paper and binding and all material and work, including sewing, shall be equally as good, and similar to that used in said Volume 1, Idaho Reports, new series. Each volume of said reports when printed, shall contain not less than eight hundred pages, exclusive of the index thereto.

Historical: Laws 1903, 367, Sec. 4.

Distribution of Reports.

Sec. 226. The reporter shall have no pecuniary interest in the reports, but he shall, in his name, but for and on behalf and for the sole benefit of the State of Idaho, copyright each and every volume of said reports before final issue from press. The decisions of the said Supreme Court which are not contained in said Volume 1, Idaho Reports, new series, shall be prepared for publication, by the reporter, as rapidly as possible, and as soon as a sufficient number of decisions are prepared to fill a volume, such volume shall be printed, and four hundred copies thereof delivered to the State Librarian, who shall distribute them as follows: To the Librarian of Congress, two copies; to the Idaho State Library, five copies; to the University of Idaho, to the Albion Normal School, and to the Lewiston Normal School, each one copy; to the library at the State Penitentiary, one copy; to each county prosecuting attorney, one copy; to each probate judge, one copy; to each District Judge, one copy; to each Justice of the Supreme Court, one copy; to the Clerk of the Supreme Court, two copies, to be kept in the court room during the sessions of court for the use of the bar; to each State and Territory in the United States, two copies, for the use of the State Library thereof; to each foreign state or country, sending to this State copies of its printed court reports, two copies; to the Governor, Secretary of State, State Treasurer, State Auditor, Attorney General, Superintendent of Public Instruction, State Engineer, and State Mine Inspector, each, one copy: *Provided*, That each public officer receiving a copy of any volume or volumes of said reports, under the provisions of this section, shall take good care of the same, and shall, upon retiring from office, turn the same over to his successor in office: *Provided further*, That copies of any volume of such reports may be again issued to any of said officers, institutions, States or Territories upon good and sufficient proof of loss of the copies sought to be replaced, presented to the Justices of the Supreme Court, who may, by writing signed by a majority of the Justices, direct the Librarian to furnish another copy of the

volume so lost, in place thereof, but no direction to furnish another copy shall be made in any case, without good and sufficient evidence showing that the officer, institution, State or Territory sustaining such loss, sustained the same without fault or negligence.

Historical: Laws 1903, 367, Sec. 5.

Contract to Print Reports.

Sec. 227. The contract to print the reports of such decisions, shall be let by the reporter with the approval of the Justices of the Supreme Court, or a majority thereof, to some person or persons who will print the same on terms most advantageous to the State, and who will furnish the State with four hundred copies of each volume at a cost not to exceed three dollars and fifty cents per copy, per volume, and who will agree to furnish copies of the reports to the public at a price not exceeding three dollars and fifty cents per copy, per volume: *Provided*, The work shall be done in the State of Idaho, if responsible parties therein offer to do said work on terms as favorable to the State as any outside bidder.

Historical: Laws 1903, 367, Sec. 6.

Bond of Printer.

Sec. 228. The person to whom the contract for printing any one or more volumes of reports under the provisions of this article, may be awarded, shall give a good and sufficient bond running to the State, in the penal sum of five hundred dollars for each volume, conditioned that he will faithfully perform all the requirements of said contract and all of the provisions of this article.

Historical: Laws 1903, 367, Sec. 7.

Receipt to Printer.

Sec. 229. The Librarian of the State Library shall give to the contracting printer a receipt for all copies of reports of said decisions delivered to him by such printer, and the Librarian shall keep a correct record, in a book kept especially for that purpose, of all volumes received and distributed under the provisions of this article, and shall take a receipt for all copies of such reports distributed, and file and preserve the same.

Historical: Laws 1903, 367, Sec. 8.

ARTICLE 4.

OTHER COURT OFFICERS.

Section

230. Cross Reference to other court officers.

Cross Reference to Other Court Officers.

Sec. 230. Other officers of courts are the clerks of the District Courts; clerks of the probate courts; stenographic reporters, and the crier, bailiff and messenger of the Supreme Court. The office, bond, fees and general duties of the clerks of the District Courts are provided for in Title 11, of this Code, and the appointment, com-

pensation and duties of the other officers mentioned in this section are provided for in the Code of Civil Procedure and the Penal Code.

Historical: New section by Commissioner inserted to preserve the continuity of the text.

Cross Reference: Clerks of the District Courts: Election: Const. Art. 5, Sec. 16; duties in general. Secs. 2049-

2051; deputies: Secs. 1975-1980; bond: Sec. 1987; fees: Sec. 2121. Clerks of probate courts: Sec. 3844. Stenographic reporters: Secs. 3980-3988. Supreme Court crier, bailiff and messenger: Sec. 3822.

CHAPTER 17.

NOTARIES PUBLIC.

Section

- 231. Appointment and commission.
- 232. Oath and bond.
- 233. Same: Filing.
- 234. Qualifications and residence of notaries.
- 235. Change in county of residence: Duplicate certificate.
- 236. General duties.

Section

- 237. Protest as evidence of facts.
- 238. Removal, death or resignation.
- 239. Certified copies of predecessor's records.
- 240. Fees of notaries.
- 241. Certificate to be transmitted to clerk.
- 242. Liability for misconduct.

Appointment and Commission.

Sec. 231. The Governor may appoint and commission in each county as many notaries public as he may deem necessary, who shall hold said office for the term of four years.

Historical: Rev. St. 1887, Sec. 285. See 4 Ter. Ses. (1867) 47, Sec. 1; amended 7 Ter. Ses. (1873) 59, Sec. 1.

California Legislation: Different:

Pol. Code 1872, Sec. 791; as amended: Deering's Code, ib.; similar as further amended: Kerr's Code, ib.

Oath and Bond.

Sec. 232. Each notary public before entering upon the duties of his office must take the usual oath of office, which must be indorsed upon his bond, and must execute a bond to the State of Idaho in the sum of one thousand dollars, with two or more sufficient sureties, to be approved by the probate judge of the county for which said notary may be appointed.

Historical: Rev. St. 1887, Sec. 286. 4 Ter. Ses. (1867) 47, Sec. 2; amended 5 Ter. Ses. (1868) 99, Sec. 1.

California Legislation: Different:

Pol. Code 1872, Sec. 799; as amended: Deering's Code, ib.; Kerr's Code, ib.

Same: Filing.

Sec. 233. The bond, with the oath of office indorsed thereon and duly attested, together with a specimen of the signature, and impress of the official seal of the appointee, must be filed in the office of the Secretary of State. At the issuance of any commission each appointee must pay the sum of ten dollars to said Secretary, who must keep an account of the same and pay one-half thereof to the State Library fund, and may apply the residue as his fees in that behalf.

Historical: Rev. St. 1887, Sec. 287. See 4 Ter. Ses. (1867) 47, Sec. 3; amended 5 Ter. Ses. (1868) 99, Sec. 2.

California Legislation: Different:

Pol. Code 1872, Sec. 800; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Qualifications and Residence of Notaries.

Sec. 234. Every person appointed as notary public must, at the time of his appointment, be an elector of the county for which he is appointed, and must continue to reside in such county: *Provided, however,* That when by the creation of a new county, or a change in the boundary of a county, or in any other manner, a notary becomes a resident of a county other than that of his appointment, he he may hold his office for the county in which his residence may be, without further appointment, for the remainder of the term covered by his commission.

Historical: Rev. St. 1887, Sec. 288;
amended Laws 1907, 55, Sec. 1.

Change in County of Residence: Duplicate Certificate.

Sec. 235. Upon the application of any notary, the county of whose residence is changed as mentioned in the preceding section, and the payment of a fee of one dollar, the Secretary of State shall issue to such notary a certificate, in duplicate, of the facts, and showing the authority of the notary to act in the county of his residence, one copy of which certificate shall be filed in the office of the clerk of the District Court of said county. Such notary shall thereupon procure, and thereafter use, a new seal to be engraved as is now required by law.

Historical: Laws 1907, 55, Sec. 2.

General Duties.

Sec. 236. It is the duty of a notary public:

1. When requested, to demand acceptance and payment of foreign, domestic and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other State, Territory, government or country, may be performed by notaries;

2. To take the acknowledgment of proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment indorsed on, or attached to, the instrument;

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this State;

4. To keep a record of all official acts done by him under the first subdivision of this section;

5. When requested, and upon payment of his fees therefor, to make and give a certified copy of any record in his office;

6. To provide and keep an official seal, upon which must be engraved his name, the words, "Notary Public," and the name of the county for which he is commissioned;

7. To authenticate with his official seal all official acts.

Historical: Rev. St. 1887, Sec. 289.
See 4 Ter. Ses. (1867) 47, Secs. 4-11.

California Legislation: Similar: Pol. Code 1872, Sec. 794; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Notary public may take acknowledgments: Sec. 3124.

Protest as Evidence of Facts.

Sec. 237. The protest of a notary, under his hand and official seal, of a bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of the notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the postoffice nearest thereto, is prima-facie evidence of the facts contained therein.

Historical: Rev. St. 1887, Sec. 290.
See 4 Ter. Ses. (1867) 47, Sec. 12.

California Legislation: Same except "primary" for "prima facie", in the

last line: Pol. Code 1872, Sec. 795;
same as amended: Deering's Code, ib.; Kerr's Code, ib.

Removal, Death or Resignation.

Sec. 238. If any notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the recorder of the county, who must deliver them to the notary's successor when qualified.

Historical: Rev. St. 1887, Sec. 291.
4 Ter. Ses. (1867) 47, Sec. 14.

California Legislation: Same except

"clerk" for "recorder", line 4: Pol.
Code 1872, Sec. 796; Deering's Code,
ib.; Kerr's Code, ib.

Certified Copies of Predecessor's Records.

Sec. 239. Every notary having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor could have done.

Historical: Rev. St. 1887, Sec. 292.
4 Ter. Ses. (1867) 47, Sec. 16.

California Legislation: Same: Pol.

Code 1872, Sec. 797; Deering's Code,
ib.; Kerr's Code, ib.

Fees of Notaries.

Sec. 240. The fees of notaries are as follows: For drawing and copying every protest for non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft or check, three dollars, said sum shall be in full payment of all fees for services of such notaries for drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft or check, or for recording every protest, or for any other services necessary by such notaries in connection therewith; for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, fifty cents; for administering and certifying an oath, twenty-five cents; for every certificate under seal, to include writing the same, fifty cents.

Historical: Rev. St. 1887, Sec. 293;
amended Laws 1907, 156, Sec. 1.

California Legislation: See Pol.

Code 1872, Sec. 798; as amended:
Deering's Code, ib.; Kerr's Code, ib.

Certificate to Be Transmitted to Clerk.

Sec. 241. Each notary, as soon as he has taken his official oath and filed his official bond, must transmit a certificate of the facts, under the hand and seal of the Secretary of State, to the clerk of the District Court for his county.

Historical: Rev. St. 1887, Sec. 294.
California Legislation: Similar: Pol. Code 1872, Sec. 800; different as

amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Liability for Misconduct.

Sec. 242. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained.

Historical: Rev. St. 1887, Sec. 295;
 See 4 Ter. Ses. (1867) 47, Sec. 13.

Code 1872, Sec. 801; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

CHAPTER 18.**COMMISSIONERS OF DEEDS.****Section**

- 243. Appointment.
- 244. General duties.
- 245. Effect of Commissioner's acts.
- 246. Filing of oath.

Section

- 247. Fees.
- 248. Copy of chapter to be transmitted.
- 249. Fee for issuing commission.

Appointment.

Sec. 243. The Governor may appoint in each State or Territory of the United States, or in any foreign State, one or more commissioners of deeds, to hold office for the term of four years from and after the date of their commission.

Historical: Rev. St. 1887, Sec. 300.
 See 1 Ter. Ses. (1864) 522, Sec. 1.

California Legislation: Same except

"or Territory" omitted: Pol. Code 1872, Sec. 811; Deering's Code, ib.; Kerr's Code, ib.

General Duties.

Sec. 244. Every commissioner of deeds has power, within the State for which he is appointed:

1. To administer and certify oaths;
2. To take and certify depositions and affidavits;
3. To take and certify the acknowledgment of proof of powers of attorney, mortgages, transfers, grants, deeds, or other instruments, for record;
4. To provide and keep an official seal, upon which must be engraved the words, "Commissioner for the State of Idaho," and the name of the commissioner.
5. To authenticate, with his official seal, all his official acts.

Historical: Rev. St. 1887, Sec. 301.
 See 1 Ter. Ses. (1864) 522, Sec. 1.

California Legislation: Similar: Pol.

Code 1872, Sec. 812; Deering's Code, ib.; Kerr's Code, ib.

Effect of Commissioners' Acts.

Sec. 245. All oaths administered, depositions and affidavits taken,

and all acknowledgments and proofs certified by commissioners of deeds, have the same force and effect, to all intents and purposes, as if done and certified in this State by any officer authorized by law to perform such acts.

Historical: Rev. St. 1887, Sec. 302; See 1 Ter. Ses. (1864) 522, Sec. 2. California Legislation: Same: Pol.	Code 1872, Sec. 813; Deering's Code, ib.; Kerr's Code, ib.
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Filing of Oath.

Sec. 246. The official oaths of commissioners of deeds must be filed in the office of the Secretary of State within six months after they are taken.

Historical: Rev. St. 1887, Sec. 303. See 1 Ter. Ses. (1864) 522, Sec. 3. California Legislation: Same: Pol.	Code 1872, Sec. 814; Deering's Code, ib.; Kerr's Code, ib.
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Fees.

Sec. 247. The fees of commissioners of deeds are the same as those prescribed for notaries public.

Historical: Rev. St. 1887, Sec. 304. California Legislation: Same: Pol. Code 1872, Sec. 815; Deering's Code, ib.; Kerr's Code, ib.	Cross Reference: Fees of notaries: Sec. 240.
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Copy of Chapter to Be Transmitted.

Sec. 248. The Secretary of State must transmit, with the commission to the appointee, a certified copy of this chapter.

Historical: Rev. St. 1887, Sec. 305. See 1 Ter. Ses. (1864) 522, Sec. 4. California Legislation: Same except	"Article, and of Section 798" for "chapter"; Pol. Code 1872, Sec. 817; Deering's Code, ib.; Kerr's Code, ib.
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Fee for Issuing Commission.

Sec. 249. The Secretary of State is entitled to receive a fee of five dollars for issuing each commission under the provisions of this chapter, to be paid by the party applying therefor.

Historical: Rev. St. 1887, Sec. 306.
8 Ter. Ses. (1875) 674, Sec. 5.

CHAPTER 19.

GENERAL PROVISIONS APPLICABLE TO ALL OFFICERS.

Article	Article
1. Qualifications and restrictions on residence.	4. Oath of office.
2. Prohibition against contracts with officers.	5. Salaries of officers.
3. Nominations and commissions.	6. Reports of officers.

ARTICLE 1.

QUALIFICATIONS AND RESTRICTIONS ON RESIDENCE.

Section	Section
250. Qualifications in general.	253. Absence of State officers.
251. Legislators disqualified from holding certain offices.	254. Offices to be provided in Capitol building.
252. Residence of certain officers.	

Qualifications in General.

Sec. 250. Every qualified elector shall be eligible to hold any office of this State for which he is an elector, except as otherwise provided by the Constitution.

Historical: Laws 1899, 33, Sec. 5; re-enacting Laws 1890-91, 57, Sec. 5.

Cross Reference: Qualifications of electors: Const. Art. 6, Sec. 2. Of Legislative officers: Const. Art. 3, Sec. 6. Of executive officers:

Const. Art. 4, Sec. 3. Of District Judges: Const. Art. 5, Sec. 23. Of prosecuting attorneys; Const. Art. 5, Sec. 18. Disqualifications to hold office enumerated: Const. Art. 6, Sec. 3.

Legislators Disqualified From Holding Certain Offices.

Sec. 251. It shall be unlawful for any member of the Legislature, during the term for which he was elected, to accept or receive, or for the Governor, or other official or board, to appoint such member of the Legislature to, any office of trust, profit, honor or emolument, created by any law passed by the Legislature of which he is a member. Any appointment made in violation of this section shall be null and void and without force and effect, and any attempt to exercise the powers of such office by such appointee shall be a usurpation, and the appointee shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than five hundred dollars nor more than five thousand dollars.

Historical: Laws 1907, 308, Secs. 1, 2.

Residence of Certain Officers.

Sec. 252. The following officers must reside at and keep their offices in Boise City:

The Governor;
Secretary of State;
Auditor;
Treasurer;
Attorney General;
Superintendent of Public Instruction, and
Clerk of the Supreme Court.

Historical: Rev. St. 1887, Sec. 325.

California Legislation: Similar:

Pol. Code 1872, Sec. 852; Deering's Code, ib.; Kerr's Code, ib.

Absence of State Officers.

Sec. 253. No State or district officer must absent himself from the State or district for more than thirty days, unless upon business of the State, or with the consent of the Governor.

Historical: Rev. St. 1887, Sec. 326; amended Laws 1890-91, 21, Sec. 1; re-enacted Laws 1899, 13, Sec. 1.

California Legislation: See Pol.

Code 1872, Sec. 853; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Offices to Be Provided in Capitol Building.

Sec. 254. The officers enumerated in Section 252 may occupy, without rent or charge, the offices provided for them respectively in the Capitol building; and no pay or allowance must be made to any one of said officers for rent, fuel, or lights whether such officer occupy such office or not.

Historical: Rev. St. 1887, Sec. 327.

ARTICLE 2.

PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS.

Section	Section
255. Officers not to be interested in contracts.	258. Dealing in warrants prohibited.
256. Nor in sales.	259. Officers to make affidavit.
257. Prohibited contracts voidable.	260. Duty of disbursing officers.
	261. Prosecution of offenders.

Officers Not to Be Interested in Contracts.

Sec. 255. Members of the Legislature, State, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Historical: Rec. St. 1887, Sec. 365.

California Legislation: Same except "and township" for "district and precinct": Pol. Code 1872, Sec. 920; Deering's Code, ib.; Kerr's Code, ib.

Cited: (Dis. op.) Ponting v. Isaman (1901) 7 Ida. 581; 65 Pac. 434; Nuckols v. Lyle (1902) 8 Ida. 589; 70 Pac. 401.

Prohibited Contracts: A contract made between the Secretary of State and a printing company whereby the former is to receive a part of the compensation payable to the latter for printing session laws and legislative journals, is within the prohibitions of this section. Anderson v. Lewis (1898) 6 Ida. 51; 52 Pac. 163.

Nor in Sales.

Sec. 256. State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

Historical: Rec. St. 1887, Sec. 366.

California Legislation: Same except "township" for "district, precinct": Pol. Code 1872, Sec. 921; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Penalty for officers purchasing at sales: Sec. 6384.

Prohibited Contracts Voidable.

Sec. 257. Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

Historical: Rev. St. 1887, Sec. 367.

California Legislation: Same: Pol. Code 1872, Sec. 922; Deering's Code, ib.; Kerr's Code, ib.

Cited: Nuckols v. Lyle (1902) 8 Ida. 589; 70 Pac. 401.

Dealing in Warrants Prohibited.

Sec. 258. The State Treasurer and Auditor, the several county, city, district or precinct officers of this State, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, of any person or persons whatever, any State, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy or clerk, and evidences of the funded indebtedness of such State, county, city, district or corporation.

Historical: Rev. St. 1887, Sec. 368.
See 8 Ter. Ses. (1875) 667, Sec. 1.

California Legislation: Similar
but "Controller" for "Auditor": Pol.

Code 1872, Sec. 923; Deering's Code,
ib.; Kerr's Code, ib.

Cross Reference: Penalty for offi-
cers dealing in scrip: Sec. 6384.

Officers to Make Affidavit.

Sec. 259. Every officer whose duty it is to audit and allow the accounts of other State, county, district, city or precinct officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this chapter.

Historical: Rev. St. 1887, Sec. 369.

California Legislation: Same Except
"city or town" for "district, city or

precinct", line 2: Pol. Code 1872,
Sec. 924; Deering's Code, ib.; Kerr's
Code, ib.

Duty of Disbursing Officers.

Sec. 260. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the State, county, city or district, when the same has been purchased, sold, received or transferred contrary to any of the provisions of this chapter.

Historical: Rev. St. 1887, Sec. 370.

California Legislation: Same Except
"or town" for "or district", line 3:

Pol. Code 1872, Sec. 925; Deering's
Code, ib.; Kerr's Code, ib.

Prosecution of Offenders.

Sec. 261. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is to be settled, audited, or paid by him, has violated any of the provisions of this chapter, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation.

Historical: Rev. St. 1887, Sec. 371.
See 8 Ter. Ses. (1875) 667, Sec. 5.

California Legislation: Same Except
"about" inserted after "is", line 3:

Pol. Code 1872, Sec. 926; additional
provision as amended: Deering's Code,
ib.; Kerr's Code, ib.

ARTICLE 3.

NOMINATIONS AND COMMISSIONS.

Section

- 262. Nominations to be in writing.
- 263. Resolution of concurrence.
- 264. Commissions by Governor.

Section

- 265. Form of commission.
- 266. Other commissions.
- 267. Appointment of deputies.

Nominations to Be in Writing.

Sec. 262. Nominations made by the Governor to the Senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

Historical: Rev. St. 1887, Sec. 335.

California Legislation: Same: Pol.

Code 1872, Sec. 889; Deering's Code,
ib.; Kerr's Code, ib.

Resolution of Concurrence.

Sec. 263. Whenever the Senate concurs in a nomination, its Secretary must immediately deliver a copy of the resolution of concurrence, certified by the President and Secretary, to the Governor.

Historical: Rev. St. 1887, Sec. 336.	Pol. Code 1872, Sec. 890; Deering's
California Legislation: Similar:	Code, ib.; Kerr's Code, ib.

Commissions by Governor.

Sec. 264. The Governor must commission:

- 1. All officers of the militia;
- 2. All officers appointed by the Governor, or by the Governor with the advice and consent of the Senate.

Historical: Rev. St. 1887, Sec. 337.	part: Pol. Code 1872, Sec. 891; Deer-
California Legislation: Same in	ing's Code, ib.; Kerr's Code, ib.

Form of Commission.

Sec. 265. The commissions of all officers commissioned by the Governor must be issued in the name of the people of this State, and must be signed by the Governor and attested by the Secretary of State, under the great seal.

Historical: Rev. St. 1887, Sec. 338.	Code 1872, Sec. 892; Deering's Code,
California Legislation: Same: Pol.	ib.; Kerr's Code, ib.

Other Commissions.

Sec. 266. The commissions of all officers, where no special provision is made by law, must be signed by the presiding officer of the body, or by the person, making the appointment.

Historical: Rev. St. 1887, Sec. 339.	Code 1872, Sec. 893; Deering's Code,
California Legislation: Same: Pol.	ib.; Kerr's Code, ib.

Appointment of Deputies.

Sec. 267. The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing, filed in the office of the appointing power or the office of its clerk.

Historical: Rev. St. 1887, Sec. 340.	Code 1872, Sec. 894; Deering's Code,
California Legislation: Same: Pol.	ib.; Kerr's Code, ib.

ARTICLE 4.

OATH OF OFFICE.

Section	Section
268. Form of oath.	271. Same: County officers.
269. Time of taking oath.	272. Where filed.
270. Before whom taken.	273. Oath of deputies.

Form of Oath.

Sec. 268. Before any officer elected or appointed to fill any office, created by the laws of the State of Idaho, enters upon the duties of his office, he must take and subscribe an oath, to be known as the official oath, which is as follows:

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution and the laws of this State; that I will faithfully discharge all the duties of the office of according to the best of my ability. So help me God.

Historical: Rev. St. 1887, Sec. 350; amended Laws 1895, 14, Sec. 1; re-nacted Laws 1899, 234, Sec. 1.	Cross Reference: Oath of members of the Legislature: Const. Art. 3, Sec. 25; of Mine Inspector: Sec. 200.
California Legislation: Similar: Pol. Code 1872, Sec. 904; Deering's Code, ib.; Kerr's Code, ib.	

Time of Taking Oath.

Sec. 269. Whenever a different time is pot prescribed by law, the oath of office must be taken, subscribed and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given.

Historical: Rev. St. 1887, Sec. 353.	Code 1872, Sec. 907; Deering's Code,
California Legislation: Same: Pol.	ib.; Kerr's Code, ib.

Before Whom Taken.

Sec. 270. Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

Historical: Rev. St. 1887, Sec. 354.	Code 1872, Sec. 908; Deering's Code,
California Legislation: Same: Pol.	ib.; Kerr's Code, ib.

Same: County Officers.

Sec. 271. The oath of office must be taken by county commissioners before the county recorder of their respective counties, on the second Monday of January succeeding each general election, and on the same day the other county officers must take and subscribe the official oath before the chairman of the board.

Historical: Laws 1899, 67, Sec. 4;	Cited: Castle v. Bannock Co. (1901)
re-enacting Laws 1895, 139, Sec. 1.	8 Ida. 124; 67 Pac. 35.

Where Filed.

Sec. 272. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially directed, as follows:

1. The oath of all officers whose authority is not limited to any particular county, in the office of the Secretary of State;
2. The oath of all officers elected or appointed for any county, district or precinct, in the offices of the recorder of their respective counties.

Historical: Rev. St. 1887, Sec. 356.	provisions as amended: Deering's
California Legislation: Similar:	Code, ib.; Kerr's Code, ib.
Pol. Code 1872, Sec. 909; additional	

Oath of Deputies.

Sec. 273. Deputies, clerks, and subordinate officers must take and file an official oath before entering upon their duties.

Historical: Rev. St. 1887, Sec. 357.	Pol. Code 1872, Sec. 910; Deering's
California Legislation: Different:	Code, ib.; Kerr's Code, ib.

ARTICLE 5.

SALARIES OF OFFICERS.

Section	Section
274. Salaries of State elective officers.	277. Salary when title is contested.
275. Salaries of judges.	278. Same: Certificate of Pending suit.
276. Time of payment of salaries.	

Salaries of State Elective Officers.

Sec. 274. The Governor, Secretary of State, State Auditor, State

Treasurer, Attorney General, and Superintendent of Public Instruction, shall, during their continuance in office, receive for their services compensation as follows:

Governor, five thousand dollars per annum;
Secretary of State, three thousand dollars per annum;
State Auditor, three thousand dollars per annum, said salary to be audited by the State Treasurer;
Attorney General, four thousand dollars per annum;
State Treasurer, four thousand dollars per annum;
Superintendent of Public Instruction, two thousand four hundred dollars per annum, and
State Mining Inspector, two thousand four hundred dollars per annum.

Such compensation shall be paid quarterly as due out of the State Treasury, and shall be in full for all services, by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office; but no increase of compensation shall affect the salaries of such officers during their present term of office: *Provided, however,* That the actual and necessary expenses of the Governor, Lieutenant Governor, Secretary of State, Attorney General, and Superintendent of Public Instruction while traveling within the State, or between points within the State, in the performance of official duties, shall be allowed and paid by the State; not, however, exceeding such sum as shall be appropriated for such purpose.

No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance, by either of them, of any official duty, shall be collected in advance, and deposited with the State Treasurer quarterly to the credit of the State.

Historical: Laws 1907, 465, Sec. 1. The words "said salary to be audited by the State Treasurer", are added on the authority of Rev. St. 1887, Sec. 218, which is otherwise repealed except as to the appointment of a deputy, which is covered by Sec. 118 of this Code.

Cross Reference: Salaries as fixed by Constitution: Art. 4, Sec. 19. Officers to receive no fees for their own use: *ib.* Diminution and increase of compensation: Const. Art. 5, Sec. 27; Legislature may provide for expenses. *ib.*

Salaries of Judges.

Sec. 275. The salary of the Justices of the Supreme Court shall be five thousand dollars per annum, and the salary of the Judges of the District Courts shall be four thousand dollars per annum. Such compensation shall be paid quarterly out of the State Treasury, but no Justice of the Supreme Court or Judge of the District Court shall be paid his salary or any part thereof, unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his consideration and determination thirty days prior to his taking and subscribing said oath.

Historical: Laws 1907, 465, Sec. 2.
Cross Reference: Salaries of Justices of Supreme and Judges of District Courts: Const. Art. 5, Sec. 17.

Expenses of Justices of Supreme Court: Sec. 3823. Expenses of District Judges: Sec. 3836.

Time of Payment of Salaries.

Sec. 276. The salaries of all State and district officers, whose salaries are paid from the State Treasury, shall be paid quarterly, on the second Monday of January, April, July and October, of each year, out of any money in the Treasury not otherwise appropriated.

Historical: Laws 1899, 142, Sec. 1;
re-enacting Laws 1890-91, 204, Sec. 1.

Salary When Title Is Contested.

Sec. 277. When the title of the incumbent of any office in this State is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

Historical: Rev. St. 1887, Sec. 380.

California Legislation: Same: Pol. Code 1872, Sec. 936; Deering's Code, ib.; additional provision as amended: Kerr's Code, ib.

Cited: Gorman v. Havird (1891) 10 Supr. Ct. Rep. 943; 141 U. S. 206; 35 S. C. R. (Law ed.) 717.

Allowance of Expenses: While this

section prohibits the payment of a salary of a de facto officer during the pendency of a trial over the right to the office, it does not preclude the board of commissioners from allowing the de facto officer the amount of expenses incurred by him in behalf of the county in the administration of the office. Havird v. Board of Commissioners (1890) 2 Ida. 687; 24 Pac. 542.

Same: Certificate of Pending Suit.

Sec. 278. As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers, whose duty it would otherwise be to draw such warrant or pay such salary.

Historical: Rev. St. 1887, Sec. 381.

California Legislation: Same: Pol. Code 1872, Sec. 937; Deering's Code,

ib.; similar as amended: Kerr's Code, ib.

ARTICLE 6.**REPORTS OF OFFICERS.****Section**

- 279. Reports to be printed and delivered to Secretary.
- 280. Distribution of reports.
- 281. Failure to make report a misdemeanor.

Section

- 281a. Subpoenas for officers failing to report.
- 281b. Sheriffs to serve subpoenas.

Reports to Be Printed and Delivered to Secretary.

Sec. 279. All annual and biennial reports of State officers and State boards of control, both elective and appointive, which are now authorized or which may be hereafter authorized by law to issue such reports, shall be compiled, printed and delivered to the Secretary of State, on or before the first day of December of the last year which said reports cover, to be by him delivered to the persons hereinafter mentioned, said reports to be of uniform size, quality and print.

Historical: Laws 1903, 149, Sec. 2.

Distribution of Reports.

Sec. 280. There shall be delivered to the Secretary of State on

or before the first day of December of the said year, to be by him receipted for, at least three hundred copies of each of the said reports for distribution as follows: One copy of each to the Governor; one to each head of the executive departments of the government; one of each to each member of the Legislature, on the first day of the session, or sooner if practicable, and the remainder to such citizens as the Secretary of State may deem proper.

Historical: Laws 1903, 149, Sec. 2.

Failure to Make Report a Misdemeanor.

Sec. 281. Any failure to comply with the provisions of the two preceding sections by the person or persons charged by law with the duty of making, compiling and delivering said reports as in said sections provided for, shall be a misdemeanor, and upon conviction thereof in any court of competent jurisdiction the person so failing shall be fined in any sum not less than two hundred dollars, nor more than three hundred dollars, and upon notification from the Secretary of State to the prosecuting attorney of any county wherein such offense shall have been committed, it shall be his duty to prosecute such person or persons, and collect such fine as may by such court be imposed, and upon the collection thereof to deposit the same with the Secretary of State for the benefit of the general school fund.

Historical: Laws 1903, 149, Sec. 3.
Phraseology slightly changed to complete the sense.

Subpoenas for Officers Failing to Report.

Sec. 281a. In case any county or other officer of this State, who is authorized or directed by law to make certain or any reports to the State Auditor, or to the State Treasurer, or to the State Board of Land Commissioners, or to any other official or board of this State, shall fail or neglect to transmit such report, or reports, or funds, by registered mail, or draft, express or money order, within the time provided by law for the sending of such report, or reports, or funds, and in case the said report, or reports, or funds, have not been received by the State Auditor, or State Treasurer, or any officer or board to whom said report or reports, or funds, should be made or delivered, within five days after the last day of the time in which said report, or reports, or funds, are required by law to be transmitted or delivered, then and in that case the State Auditor, the State Treasurer, or the officer or board to whom such report, or reports, or funds, must be made as required by law, shall forthwith issue a subpoena for any officer or officers so failing or neglecting to transmit the same, requiring such officer or officers to appear forthwith before the State Auditor, or State Treasurer, or officer or board issuing said subpoena, and produce said report, or reports, or funds aforesaid.

Historical: Laws 1899, 432, Sec. 1.

Sheriffs to Serve Subpoenas.

Sec. 281b. The sheriffs of the several counties are hereby desig-

nated as the officers by whom such subpoenas shall be served, and for such services said sheriffs shall be paid the same compensation as is by law provided for similar services in civil cases. The officer so failing or neglecting to transmit such report, or reports, or funds, must pay forthwith to the sheriff aforesaid the compensation for services allowed in this section, and shall be liable upon his official bond for the compensation due said sheriff.

Historical: Laws 1899, 432, Sec. 2.

CHAPTER 20.

BONDS OF OFFICERS.

Section

- 282. Time for filing bond.
- 283. Approval of bonds of State officers.
- 284. Same: Bonds of county officers.
- 285. Record of official bonds.
- 286. Approval endorsed on bond.
- 287. Bond to be approved before fil-
ties.
- 288. Conditions, signatures and sure-
ties.
- 289. Justification of sureties.
- 290. Sureties for less than penal sum.
- 291. Custody of official bonds.
- 292. Form of bond.
- 293. Extent of sureties' liability.
- 294. Same: Duties subsequently im-
posed.
- 295. Suits by persons injured.
- 296. Same: Successive suits.
- 297. Defects not to affect liability.
- 298. Insufficiency of sureties: Pro-
ceedings.
- 299. Same: Additional bond.

Section

- 300. Same: Original bond not dis-
charged.
- 301. Same: Action on either bond.
- 302. Same: Separate judgments on
bonds.
- 303. Same: Contribution between
sureties.
- 304. Discharge of sureties by new
bond.
- 305. Vacancies: Bond of appointee.
- 306. Release of sureties.
- 307. Same: Application for release.
- 308. Same: Service of statement.
- 309. Same: Office declared vacant.
- 310. Same: Remaining sureties lia-
ble.
- 311. Same: Accrued liabilities unaf-
fected.
- 312. Application of chapter.
- 313. Bonds of receivers, etc.
- 314. Actions on bonds: Lis pendens.
- 315. Same.
- 316. Bonds of deputies.

Time for Filing Bond.

Sec. 282. Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

Historical: Rev. St. 1887, Sec. 390.
See 4 Ter. Ses. (1867) 50, Sec. 1.

California Legislation: Same: Pol.

Code 1872, Sec. 948; Deering's Code,
ib.; Kerr's Code, ib.

Approval of Bonds of State Officers.

Sec. 283. Unless otherwise prescribed by statute, the official bonds of State officers must be approved by the Governor, and filed and recorded in the office of the Secretary of State.

Historical: Rev. St. 1887, Sec. 391.
See 4 Ter. Ses. (1867) 50, Sec. 1.

California Legislation: Same: Pol.

Code 1872, Sec. 948; Deering's Code,
ib.; Kerr's Code, ib.

Same: Bonds of County Officers.

Sec. 284. Unless otherwise prescribed by statute, the official bonds

of county and precinct officers must be approved by the board of county commissioners, and filed and recorded in the office of the county recorder, and must be in such penalties as are required by law, or, when not fixed by law, as required by the board.

Historical: Rev. St. 1887, Sec. 292. See 4 Ter. Ses. (1867) 50, Sec. 1.

California Legislation: Different: Pol. Code 1872, Sec. 950; as amended: Deering's Code, ib.; Kerr's Code, ib.

Approval: It is the duty of the board of county commissioners and not of the county attorney to approve official bonds. *Miller v. Smith* (1900) 7 Ida. 204; 61 Pac. 824.

Record of Official Bonds.

Sec. 285. Official bonds must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds."

Historical: Rev. St. 1887, Sec. 393. **California Legislation:** Same: Pol.

Code. 1872, Sec. 951; Deering's Code, ib.; Kerr's Code, ib.

Approval Indorsed on Bond.

Sec. 286. The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

Historical: Rev. St. 1887, Sec. 394. See 4 Ter. Ses. (1867) 50, Sec. 2.

California Legislation: Same: Pol.

Code 1872, Sec. 952; Deering's Code, ib.; Kerr's Code, ib.

Bond to Be Approved Before Filing.

Sec. 287. No officer with whom any official bond is required to be filed must file such bond until approved.

Historical: Rev. St. 1887, Sec. 395. See 4 Ter. Ses. (1867) 50, Sec. 3.

California Legislation: Same: Pol.

Code 1872, Sec. 953; Deering's Code, ib.; Kerr's Code, ib.

Conditions, Signatures and Sureties.

Sec. 288. The condition of an official bond must be that the principal will well, truly and faithfully perform all official duties then required of him by law, and also all such additional duties as may be imposed on him by any law of the State. Such bond must be signed by the principal and at least two sureties, to the full penalty of the bond. No person shall be accepted as surety on such bond unless he shall, during the year immediately preceding, have been assessed for and paid taxes, in his own right, upon property to the amount for which he has become surety.

Historical: Rev. St. 1887, Sec. 396. Act Feb. 3, 1887.

California Legislation: Same through "sureties", line 5, rest omitted: Pol. Code 1872, Sec. 954; Deering's Code, ib.; Kerr's Code, ib.

Defective Bond: The failure of an official bond to contain all of the statutory conditions required of such bond

is no defense to an action to enforce a liability admittedly covered by the bond. *People v. Slocum* (1886) 1 Ida. 62.

Absence of Signature: The failure of the principal on an official bond to sign the same as principal does not invalidate the bond. *State v. McDonald* (1895) 4 Ida. 468; 40 Pac. 312.

Justification of Sureties.

Sec. 289. The officer whose duty it is to approve official bonds required of State, county, district or precinct officers, must not accept or approve any such bond unless each of the sureties severally

justify, before an officer authorized to administer oaths, as follows:

1. On a bond given by a State officer, that such surety is a resident and freeholder or householder within this State; and on a bond given by a county, district, or precinct officer, that such surety is a resident and freeholder or householder within such county or within an adjoining county;

2. That such surety is worth the amount for which he becomes surety over and above all his debts and liabilities in unincumbered property situated within this State, exclusive of property exempt from execution and forced sale.

Historical: Rev. St. 1887, Sec. 397. See 4 Ter. Ses. (1867) 50, Sec. 7.

California Legislation: Same except "or township" for "district or precinct," lines 2 and 7: Pol. Code 1872, Sec. 955; additional subd. as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cross Reference: Sufficiency of corporate sureties: Sec. 2940. Reimbursement of officers for premiums paid for official bonds: Sec. 2941.

Justification of Sureties: A compliance with this section in the matter of justification is all that is required in the first instance, but after the approval of a county officer's bond by the commissioners, they may require a further justification if, for any cause, they believe the sureties insufficient. *Gorman v. Board of Commissioners* (1874) 1 Ida. 553.

Sureties for Less Than Penal Sum.

Sec. 290. When the penal sum of any bond required to be given amounts to more than one thousand dollars the sureties may become severally liable for portions of not less than five hundred dollars thereof, making in the aggregate at least two sureties for the whole penal sum. And if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable.

Historical: Rev. St. 1887, Sec. 398. 4 Ter. Ses. (1867) 50, Sec. 8.

California Legislation: Same except "specifically" for "specially," line 10: Pol. Code 1872, Sec. 956; Deering's Code, ib.; additional sentence as amended: Kerr's Code, ib.

Liability of Sureties: Where the sureties on an official bond, containing joint and several obligations, jus-

tify in sums less than the penalty of the bond, they are, nevertheless, liable for the full penalty of the bond; the sums set opposite their respective names in the justification merely indicate the sums for which they intend to justify, and fix their liability toward each other for contribution. *People v. Slocum* (1866) 1 Ida. 62.

Custody of Official Bonds.

Sec. 291. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

Historical: Rev. St. 1887, Sec. 399. See 4 Ter. Ses. (1867) 50, Sec. 5.

California Legislation: Same: Pol.

Code 1872, Sec. 957; Deering's Code, ib.; Kerr's Code, ib.

Form of Bond.

Sec. 292. All official bonds must be in form joint and several, and made payable to the State of Idaho in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

Historical: Rev. St. 1887, Sec. 400.
See 4 Ter. Ses. (1867) 50, Sec. 6.

California Legislation: Same except

"California" for "Idaho," line 2: Pol-
Code 1872, Sec. 958; Deering's Code,
ib.; Kerr's Code, ib.

Extent of Sureties' Liability.

Sec. 293. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

Historical: Rev. St. 1887, Sec. 401.
See 4 Ter. Ses. (1867) 50, Sec. 9.

California Legislation: Same: Pol.
Code 1872, Sec. 959; Deering's Code,
ib.; Kerr's Code, ib.

Breach of Sheriff's Bond: The seizure and sale by a deputy sheriff, under a lawful writ of attachment, of goods worth three times the amount of plaintiff's claim, constitutes a

breach of the sheriff's bond for which his sureties are liable. Work Bros. v. Kinney (1900) 7 Ida. 460; 63 Pac. 596.

Liability of Sureties: The sureties on the sheriff's bond are not liable for the delinquencies and defalcations of the sheriff during a former term of office. Work Bros. v. Kinney (1902) 8 Ida. 771; 71 Pac. 477.

Same: Duties Subsequently Imposed.

Sec. 294. Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

Historical: Rev. St. 1887, Sec. 402.
4 Ter. Ses. (1867) 50, Sec. 10.

California Legislation: Same: Pol.
Code 1872, Sec. 960; Deering's Code,
ib.; Kerr's Code, ib.

Cited: Work Bros. v. Kinney (1900)
7 Ida. 460; 63 Pac. 596.

Suits by Persons Injured.

Sec. 295. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the State of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

Historical: Rev. St. 1887, Sec. 403.
4 Ter. Ses. (1867) 50, Sec. 11.

California Legislation: Same except
"California" for "Idaho", line 3: Pol-

Code 1872, Sec. 961; Deering's Code,
ib.; Kerr's Code, ib.

Cited: Palmer v. Pettingill (1898)
6 Ida. 346; 55 Pac. 653.

Same: Successive Suits.

Sec. 296. No such bond is void on the first recovery of a judgment thereon; but suit may be afterwards brought, from time to time, and

judgment recovered thereon by the State of Idaho, or by any person to whom a right of action has accrued, against such officer and his sureties, until the whole penalty of the bond is exhausted.

Historical: Rev. St. 1887, Sec. 404.
4 Ter. Ses. (1867) 50, Sec. 12.

California Legislation: Same except

"California" for "Idaho," line 3: Pol. Code 1872, Sec. 962; Deering's Code, ib.; Kerr's Code, ib.

Defects Not to Affect Liability.

Sec. 297. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the State, or a party interested, and the State or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become, and were, included as sureties in such bond.

Historical: Rev. St. 1887, Sec. 405.
See 4 Ter. Ses. (1867) 50, Sec. 13.

California Legislation: Same: Pol.

Code 1872, Sec. 963; Deering's Code, ib.; Kerr's Code, ib.

Insufficiency of Sureties: Proceedings.

Sec. 298. Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the judge, court, board, officer, or other person whose duty it is to approve the official bond of any officer, that the sureties, or any one of them, has, since such bond was approved, died, removed from the State, become insolvent, or from any other cause has become incompetent or insufficient surety on such bond, the judge, court, board, officer, or other person may issue a citation to such officer, requiring him, on a day therein named, not less than three nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the judge, court, board, officer, or other person must make an order vacating the office, and the same must be filled as provided by law.

Historical: Rev. St. 1887, Sec. 406.
See 4 Ter. Ses. (1867) 50, Sec. 16.

California Legislation: Same: Pol.

Code 1872, Sec. 964; Deering's Code, ib.; Kerr's Code, ib.

Same: Additional Bond.

Sec. 299. The additional bond must be in such penalty as directed by the court, judge, board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

Historical: Rev. St. 1887, Sec. 407.
See 4 Ter. Ses. (1867) 50, Sec. 20.

Code 1872; Sec. 965; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Original Bond Not Discharged.

Sec. 300. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

Historical: Rev. St. 1887, Sec. 408.
4 Ter. Ses. (1867) 50, Sec. 21.

Code 1872. Sec. 966; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Action on Either Bond.

Sec. 301. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

Historical: Rev. St. 1887, Sec. 409.
See 4 Ter. Ses. (1867) 50, Sec. 22.

Code 1872, Sec. 967; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Separate Judgments on Bonds.

Sec. 302. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively, but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

Historical: Rev. St. 1887, Sec. 410.
4 Ter. Ses. (1867) 50, Sec. 23.

Code 1872, Sec. 968; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Contribution Between Sureties.

Sec. 303. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover, in any court of competent jurisdiction, of the sureties on the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

Historical: Rev. St. 1887, Sec. 411.
4 Ter. Ses. (1867) 50, Sec. 24.

Code 1872, Sec. 969; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Discharge of Sureties by New Bond.

Sec. 304. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond, with sufficient sureties, in like form, penalty, and conditions, and to be approved and filed, as the original bond. Upon the filing and approval of the new bond such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabili-

ties incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

Historical: Rev. St. 1887, Sec. 412.
See 4 Ter. Ses. (1867) 50, Sec. 27 et seq.

California Legislation: Same: Pol. Code 1872, Sec. 970; Deering's Code, ib.; Kerr's Code, ib.

Vacancies: Bond of Appointee.

Sec. 305. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

Historical: Rev. St. 1887, Sec. 413.
4 Ter. Ses. (1867) 50, Sec. 26.

Code 1872, Sec. 971; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Release of Sureties.

Sec. 306. Any surety on the official bond of a city, district, precinct, county or State officer may be relieved from liabilities thereon afterwards accruing by complying with the provisions of the three sections following.

Historical: Rev. St. 1887, Sec. 414.
See 4 Ter. Ses. (1867) 50, Sec. 27.

"town" for "district, precinct," line 1:
Pol. Code 1872, Sec. 972; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same except

Same: Application for Release.

Sec. 307. Such surety must file with the judge, court, board, officer or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

Historical: Rev. St. 1887, Sec. 415.
4 Ter. Ses. (1867) 50, Sec. 28.

Code 1872, Sec. 973; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Service of Statement.

Sec. 308. A copy of the statement must be served on the officer named in such official bond and due return or affidavit of service made thereon as in other cases.

Historical: Rev. St. 1887, Sec. 416.
4 Ter. Ses. (1867) 50, Sec. 29.

Code, 1872, Sec. 974; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Office Declared Vacant.

Sec. 309. In twenty days after the service of such notice the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer has, before that time, given

good and ample surety for the discharge of all his official duties as required originally.

Historical: Rev. St. 1887, Sec. 417.
4 Ter. Ses. (1867) 50, Sec. 30.

California Legislation: Same except

"ten" for "twenty", line 1: Pol. Code 1872, Sec. 975; Deering's Code, ib.; Kerr's Code, ib.

Same: Remaining Sureties Liable.

Sec. 310. The release, discharge, voluntary withdrawal, or incompetency, of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

Historical: Rev. St. 1887, Sec. 418.

California Legislation: Same. Pol.

Code 1872, Sec. 977; Deering's Code, ib.; Kerr's Code, ib.

Same: Accrued Liabilities Unaffected.

Sec. 311. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order releasing him from liability, but such legal proceedings may be had therefor in all respects as though no such order had been made.

Historical: Rev. St. 1887, Sec. 419.
4 Ter. Ses. (1867) 50, Sec. 31.

California Legislation: Same except "mentioned in Section 975" for "re-

leasing him from liability", line 3; Pol. Code 1872, Sec. 980; Deering's Code, ib.; Kerr's Code, ib.

Application of Chapter.

Sec. 312. The provisions of this chapter apply to the bonds of receivers, executors, administrators and guardians.

Historical: Rev. St. 1887, Sec. 420.
4 Ter. Ses. (1867) 50, Sec. 32.

California Legislation: Same except "article for "chapter", line 1: Pol. Code 1872, Sec 981; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Bonds of receivers: Sec. 4332; of executors and administrators: Sec. 5371; of guardians: Sec. 5777.

Bonds of Receivers, Etc.

Sec. 313. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the State of Idaho; and upon the order of the court where such action or proceeding is pending may be prosecuted for the benefit of any and all persons interested therein.

Historical: Rev. St. 1887, Sec. 421.
4 Ter. Ses. (1867) 50, Sec. 33.

California Legislation: Same except

"California" for "Idaho", line 4: Pol. Code 1872, Sec. 982; Deering's Code, ib.; Kerr's Code, ib.

Actions on Bonds: Lis Pendens.

Sec. 314. When an action is commenced in any court in this State for the benefit of the State, to enforce the penalty of, or to recover money upon, an official bond or obligation, or any bond or obligation executed in favor of the State of Idaho, or of the people of this State, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either

positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom), and made payable to the people of this State, or to the State of Idaho, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the State; and thereupon the clerk receiving such affidavit must certify, to the recorder of the county in which such real estate is situated, the names of the parties to the action, the name of the court in which the action is pending and the amount claimed in the complaint, with the date of the commencement of the suit.

Historical: Rev. St. 1887, Sec. 422. 4 Ter. Ses. (1867) 50, Sec. 34.

California Legislation: Same except "California" for "Idaho": Pol. Code 1872, Sec. 983; Deering's Code, ib.; Kerr's Code, ib.

Cited: Western Loan & Sav. Co. v. Kendrick State Bank (1907) 13 Ida. ...; 90 Pac. 112.

Same.

Sec. 315. Upon receiving such certificate the county recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate belonging to the defendant or to one or more of the defendants, situated in any county in which such certificate is so filed, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

Historical: Rev. St. 1887, Sec. 423. See 4 Ter. Ses. (1867) 50, Sec. 35. The clause "belonging to the defendant", etc., is transposed for grammatical reasons.

California Legislation: Same: Pol. Code 1872, Sec. 984; Deering's Code, ib.; Kerr's Code, ib.

Bonds of Deputies.

Sec. 316. Every officer or body appointing a deputy, clerk or subordinate officer, may require an official bond to be given by the person appointed, and may fix the amount thereof.

Historical: Rev. St. 1887, Sec. 424.
California Legislation: Same: Pol.

Code 1872, Sec. 985; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 21.

RESIGNATIONS AND VACANCIES.

Section

- 317. How vacancies occur.
- 318. Resignations.
- 319. Notice of removal.
- 320. Vacancies in State offices.
- 321. Vacancies: How filled.
- 322. Same: County and precinct officers.
- 322a Same: Appointments to be petitioned for.

Section

- 323. Residence of appointed commissioner.
- 324. Vacancies occurring immediately before election.
- 325. Vacancies in legislative office: Special election.
- 326. Same: Representative in Congress.

Section

327. Vacancies not otherwise provided for.
 328. Appointments to be in writing.
 329. Tenure of appointee.

Section

330. When vacancies occur possession to be taken.
 331. Powers of appointee.
 332. Temporary inability of officers.

How Vacancies Occur.

Sec. 317. Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows:

1. The resignation of the incumbent.
2. His death.
3. His removal from office.
4. The decision of a competent tribunal declaring his office vacant.
5. His ceasing to be a resident of the State, district or county in which the duties of his office are to be exercised, or for which he may have been elected.
6. A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provisions relating thereto.
7. A forfeiture of office as provided by any law of the State.
8. Conviction of any infamous crime, or of any public offense involving the violation of his oath of office.
9. The acceptance of a commission to any military office, either in the militia of this State, or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the State for a period of not less than sixty days.

Historical: Laws 1899, 67, Sec. 1; re-enacting Laws 1890-91, 57, Sec. 169.

California Legislation: See Pol. Code 1872, Sec. 996; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Failure of county officer who is granted leave of absence to appoint a deputy during his absence creates a vacancy in the office: Sec. 1977.

Resignations.

Sec. 318. Resignations of civil offices must be in writing, and may be made as follows:

1. By the Governor to the Legislature, if in session; if not, to the Secretary of State.
2. By Senators and Representatives in Congress, and by all officers elected by the qualified voters of the State, and by Judges of the Supreme Court and District Courts, and Regents of the University, to the Governor.
3. By members of the Senate and House of Representatives, to the presiding officers of their respective bodies, in session, who shall immediately transmit information of the same to the Governor. If such bodies are not in session, to the Governor.
4. By all county and precinct officers, to the county board, and by members of the county board, to the county auditor.
5. By all township officers, to the township clerk; and by the township clerk to the town board.
6. By all officers holding appointment, to the officer or body by whom they were appointed.

Such resignation shall not take effect until accepted by the board or officer to whom the same is made.

Historical: Laws 1899, 67, Sec. 2; re-enacting Laws 1890-91, 57, Sec. 170. The phrase "must be in writing" is taken from Rev. St. 1887, Sec. 430, which is repealed, in other respects, by this section. "District Attorneys" omitted from subd. 2, the office being

superseded by that of prosecuting attorney, which is a county office.

California Legislation: See Pol. Code 1872, Sec. 995; Deering's Code, ib.; Kerr's Code, ib.

Notice of Removal.

Sec. 319. Whenever an officer is removed, convicted of any infamous crime or offense involving a violation of his oath of office, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had, must give notice thereof to the officer empowered to fill the vacancy.

Historical: Rev. St. 1887, Sec. 432; re-written to conform to Laws 1899, 67, Sec. 1. (Sec. 317, subd. 8, ante.)

California Legislation: Similar: Pol. Code 1872, Sec. 997; Deering's Code, ib.; Kerr's Code, ib.

Vacancies in State Offices.

Sec. 320. All vacancies in any State office, and in the Supreme and District Courts, unless otherwise provided for by law, shall be filled by appointment by the Governor, until the next general election after such vacancy occurs, when such vacancy shall be filled by election.

Historical: Laws 1899, 67, Sec. 3; re-enacting Laws 1890-91, 57, Sec. 12, omitting the words "or in the office of district attorney". That office is abolished, and prosecuting attorneys are county officers.

California Legislation: See Pol. Code 1872, Sec. 1001; as amended: Deering's Code, ib.; Kerr's Code, ib.

Vacancies: How Filled.

Sec. 321. Vacancies shall be filled in the following manner: In the office of the Clerk of the Supreme Court, by the Supreme Court. In all other State and judicial district offices, and in the membership of any board or commission created by the State, where no other method is specially provided, by the Governor. In county and precinct offices, by the county board; and in the membership of such board, by the Governor. In city and village offices, by the mayor and council or board of trustees.

Historical: Laws 1899, 67, Sec. 4; re-enacting Laws 1890-91, 57, Sec. 171. Omitting the provision relating to

"township offices" as there are no such offices. "Clerk" for "reporter" of Supreme Court.

Same: County and Precinct Offices.

Sec. 322. All vacancies in any county or precinct office of any of the several counties of the State, except that of the county commissioners (who shall be appointed by the Governor), shall be filled by appointment by the county commissioners of the county in which the vacancy occurs until the next general election, when such vacancy shall be filled by election.

Historical: Laws 1899, 67, Sec. 9.

Same: Appointments to Be Petitioned For.

Sec. 322a. No appointment to fill a vacancy in office must be made

by the board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the precinct, or district, if for a precinct or district office.

Historical: Rev. St. 1887, Sec. 1765.

California Legislation: Same except "township" for "precinct": Pol. Code

1872, Sec. 4066; Deering's Code, ib.; Kerr's Code, ib.

Residence of Appointed Commissioner.

Sec. 323. Whenever the Governor appoints a county commissioner to fill a vacancy in any county, he shall appoint a person who is a resident of the commissioner district of the county in which the vacancy exists.

Historical: Laws 1899, 67, Sec. 10.

Vacancies Occurring Immediately Before Election.

Sec. 324. Vacancies occurring in any State, judicial district, county, precinct, township or any public elective office, thirty days prior to any general election, shall be filled thereat. Vacancies occurring in the office of probate judge or justice of the peace, shall be filled by appointment by the county commissioners.

Historical: Laws 1899, 67, Sec. 8; re-enacting Laws 1890-91, 57, Sec. 175.

Vacancy in Legislative Office: Special Election.

Sec. 325. When a vacancy occurs in the office of a member of the Legislature, and the body in which such vacancy exists is in session, or will convene prior to the next general election, the Governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days' notice of such election shall be given.

Historical: Laws 1899, 67, Sec. 12. Omitting "Representative in Congress" which is covered by the following section, and inserting the words "is in session", which are added on the authority of Rev. St. 1887, Sec. 433, which is otherwise repealed by this section.

California Legislation: See Pol. Code 1872, Sec. 998; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Conduct of special election: Secs. 480-484.

Same: Representative in Congress.

Sec. 326. Whenever any vacancy shall occur in the office of Representative in Congress from the State, it shall be the duty of the Governor to appoint a day to hold a special election to fill such vacancy, and cause notice of such election to be given as required in Sections 354 and 355 of these Codes.

Historical: Laws 1899, 67, Sec. 11; re-enacting Laws 1890-91, 57, Sec. 176.

Vacancies Not Otherwise Provided For.

Sec. 327. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the Governor must fill such vacancy by granting a commission, to expire at the end of the next session of the Legislature or at the next election by the people.

Historical: Rev. St. 1887, Sec. 434.
California Legislation: Same: Pol.

Code 1872, Sec. 999; Deering's Code, ib.; Kerr's Code, ib.

Appointments to Be in Writing.

Sec. 328. Appointments under the provisions of this chapter shall be in writing, and continue until the next election, at which the vacancy shall be filled, and until a successor is elected and qualified, and be filed with the Secretary of State, or proper county auditor, respectively.

Historical: Laws 1899, 67, Sec. 6;
 re-enacting Laws 1890-91, 57, Sec. 173.

Omitting "or proper township clerk" as there is no such office.

Tenure of Appointee.

Sec. 329. Any of the said officers that may be elected or appointed to fill vacancies may qualify and enter upon the discharge of the duties of their offices immediately thereafter; and, if elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; but if appointed they shall hold the same only until their successors are elected and qualified.

Historical: Laws 1899, 67, Sec. 13,
 omitting the last four lines, which are covered by Sec. 325 ante.

When Vacancies Occur Possession to Be Taken.

Sec. 330. When a vacancy occurs in a public office, possession shall be taken of the office room, and of the books, papers, and all things pertaining to the office, to be held until the election or appointment and qualification of a successor, as follows:

Of the office of county recorder and auditor, by his deputy, if there be one; if not, by the county commissioners; and in case of any delay in the election or appointment of a successor to the recorder and auditor, his deputy shall continue to discharge the duties of the office, being responsible for the conduct and management thereof upon his official bond. Of the office of county treasurer, by the sheriff. Of any of the State officers, by the Governor, or in his absence or inability at the time of the occurrence as follows: Of the Secretary of State, by the Treasurer; of the Auditor, and Superintendent of Public Instruction, by the Secretary of State; of the Treasurer, by the Secretary of State and Auditor, who shall make an inventory of the money and warrants therein, sign the same and transmit it to the Governor, if he be in the State; and the Secretary of State shall take the keys of the safes and desks, after depositing the books, papers, money and warrants therein, and the Auditor shall take the key of the office room.

Historical: Laws 1899, 67, Sec. 7;
 re-enacting Laws 1890-91, 57, Sec. 174,
 omitting the "Commissioner of Public Lands and Buildings," as there is

no such officer. "Recorder and Auditor" substituted for "county clerk" to conform to proper nomenclature.

Powers of Appointee.

Sec. 331. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers,

and is subject to all the liabilities, duties and obligations, of the officer whose vacancy he fills.

Historical: Rev. St. 1887, Sec. 436.
California Legislation: Same Pol.

Code 1872, Sec. 1004; Deering's Code, ib.; Kerr's Code, ib.

Temporary Inability of Officers.

Sec. 332. Whenever for any reason the Secretary of State, State Auditor, Attorney General and Superintendent of Public Instruction are temporarily unable to perform the duties of their respective offices, the Governor may appoint a suitable person to perform such duties temporarily as an acting officer, until the incumbent of the office shall be able to resume the performance of his duties, or a vacancy occurs in such office. The Governor shall require such bonds for persons so appointed as may appear to him necessary for the protection of the State, not exceeding the bonds given by the officer in whose stead he acts. Such acting officer shall be nominated by the incumbent of the office: *Provided*, That when the incumbent is unable or fails to so nominate, the Governor may appoint without such nomination: *Provided further*, That nothing in this section contained shall be construed to amend or repeal existing laws relating to filling vacancies in State offices.

Historical: Laws 1899, 21, Secs. 1,
2: re-enacting Laws 1890-91, 39, Secs.
1, 2.

CHAPTER 22.

MISCELLANEOUS PROVISIONS.

Section	Section
333. Possession of books and papers.	340. Signature of ex-officio officers.
334. Same: Proceedings to compel delivery.	341. Official records open to inspection.
335. Same: Attachment to enforce delivery.	342. Officers to keep accounts.
336. Seals of executive officers.	343. Furnishing account books: Examination by citizens.
337. Great Seal of State.	343a. Sale of pamphlet laws.
338. Officers may administer oaths.	343b. Same: Penalty for non-compliance.
339. Office hours.	

Possession of Books and Papers.

Sec. 333. Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office.

Historical: Rev. St. 1887, Sec. 440.
California Legislation: Same: Pol.
Code 1872, Sec. 1014; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Penalty for withholding books and records from successor: Sec. 6389.

Same: Proceedings to Compel Delivery.

Sec. 334. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply by petition to any court of record sitting in the county where the person so refusing or neglecting resides, or to any Judge of the District or probate

court residing therein, and the court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegation and proofs of the parties, and to order any such books or papers to be delivered to the petitioner.

Historical: Rev. St. 1887, Sec. 441.

California Legislation: Same except "county" for "probate", line 5: Pol.

Code 1872, Sec. 1015; Superior Court system as amended: Deering's Code, ib.; Kerr's Code, ib.

Same: Attachment to Enforce Delivery.

Sec. 335. The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the petitioner, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner.

Histoical: Rev. St. 1887, Sec. 442.

California Legislation: Same: Pol.

Code 1872, Sec. 1016; Deering's Code, ib.; Kerr's Code, ib.

Seals of Executive Officers.

Sec. 336. Except when otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this title takes effect, and each of such officers must at once file a description and impression of such seal in the office of the Secretary of State.

Historical: Rev. St. 1887, Sec. 443.

California Legislation: Same except "Code" for "title", line 3: Pol. Code

1872, Sec. 1026; Deering's Code, ib.; Kerr's Code, ib.

Great Seal of State.

Sec. 337. The design drawn and executed by Miss Emma Edwards, of Boise City, and reported and recommended by the select joint committee to devise a Great Seal for the State, with the Latin motto, "Esto Perpetua," is adopted, and is hereby made the Great Seal of the State of Idaho.

Historical: Laws 1899, 147, Sec. 1; re-enacting Laws 1890-91, 215, Sec. 1.

California Legislation: See Pol. Code 1872, Sec. 1027; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Secretary of State

to keep and use seal: Const. Art. 4, Sec. 15. Grants and permissions to bear seal: Art. 4, Sec. 16. Great Seal to be attached to commissions of officers: Sec. 265.

Officers May Administer Oaths.

Sec. 338. Every executive and judicial officer may administer and certify oaths.

Historical: Rev. St. 1887, Sec. 450.

California Legislation: Same: Pol.

Code 1872, Sec. 1028; Deering's Code, ib.; Kerr's Code, ib.

Office Hours.

Sec. 339. Unless otherwise provided by law, every officer must keep his office open for the transaction of business from ten o'clock a. m. until four o'clock p. m. each day, except upon holidays.

Historical: Rev. St. 1887, Sec. 452.

California Legislation: Same: Pol.

Code 1872, Sec. 1030; Deering's Code, ib.; Kerr's Code, ib.

Signature of Ex-Officio Officers.

Sec. 340. When an officer discharges ex-officio the duties of another office than that to which he is elected or appointed, his official signature and attestation must be in the name of the office the duties of which he discharges.

Historical: Rev. St. 1887, Sec. 453.
California Legislation: Same: Pol.

Code 1872, Sec. 1031; Deering's Code, ib.; Kerr's Code, ib.

Official Records Open to Inspection.

Sec. 341. The public records and other matters in the office of any officer are, at all times during office hours, open to the inspection of any citizen of this State.

Historical: Rev. St. 1887, Sec. 454.
California Legislation: Same: Pol.
Code 1872, Sec. 1032; same with ad-

ditional provisions as amended: Deering's Code, ib.; Kerr's Code, ib.

Officers to Keep Accounts.

Sec. 342. It shall be the duty of all State, county, city and precinct officers, who receive fees for services in an official capacity, or who receive public moneys for safe keeping, to at all times keep a public account of the same, consisting of a day book and ledger in which shall be entered all receipts of fees or moneys, with a brief statement of from whom and on what account the same were received; and a like account of all disbursements of such moneys, and to whom and on what account the same were paid. A failure to comply with the requirements of this section shall subject the offender, upon conviction, to the payment of a fine not exceeding three hundred dollars, or to imprisonment in the county jail for a period not exceeding six months, or to both such fine and imprisonment.

Historical: Laws 1901, 208, Sec. 1;
amended Laws 1903, 282, Sec. 1.

Furnishing Account Books: Examination by Citizens.

Sec. 343. It shall be the duty of the State and county officers respectively charged with furnishing books and stationery for public use, to furnish suitable books for the purpose to such officers; and such books shall be subject to examination by any citizen at any reasonable time, and such citizen shall be entitled to take memoranda from the same without charges being imposed: *Provided*, If any person or persons desire certified copies of any such account, the officer or person in charge of said books shall be entitled to demand and receive fees for the same, as for copies of other public records in his control.

Historical: Laws 1901, 208, Sec. 2.

Sale of Pamphlet Laws.

Sec. 343a. All publications of laws and the Constitution of the State of Idaho, issued in pamphlet form, other than the regular biennial edition of the session laws, shall be sold by the officer or officers having the same published, at a price of not less than ten cents, nor more than twenty cents, per one hundred folios contained in each copy. The moneys arising from the sale of such publications shall be turned

into the State Treasury, quarterly, to the credit of the general fund, on the first days of January, April, July and October of each year. A report under oath must accompany each quarterly payment into the State Treasury, stating the number of copies of each publication sold, and the amount received therefor.

Historical: Laws 1905, 231, Secs. 1, 2.

Same: Penalty for Non-Compliance.

Sec. 343b. Any failure to comply with the provisions of the preceding section by any person or persons charged by law with the duty of publishing any of said laws as in said section provided for, shall be a misdemeanor, and upon conviction thereof in any court of competent jurisdiction the person guilty shall be fined in any sum not less than two hundred dollars nor more than three hundred dollars, and upon information, it shall be the duty of the Attorney General or the prosecuting attorney of any county, to prosecute such person or persons, and upon conviction to collect such fine as may be imposed, and deposit the same with the State Treasurer for the benefit of the general school fund.

Historical: Laws 1905, 231, Sec. 3.
Phraseology slightly changed to make the section grammatical.

TITLE 3

ELECTIONS

Chapter

1. General provisions.
2. Time for holding elections.
3. Notices of election.
4. Qualifications of voters.
5. Election precincts, judges and clerks.
6. Primary elections.
7. Nominations.

Chapter

8. Registration of electors.
9. Ballots and supplies.
10. Conduct of election.
11. Canvass of returns.
12. Presidential electors.
13. Removal of county seats and changing county boundaries.
14. Special elections.

Note: The act which forms the basis of this title was enacted at the first session of the State Legislature (1890-91) and re-enacted at the fifth session (1899). This act expressly repealed the Territorial statutes governing elections which were embodied in Tit. 2 of the Political Code of the Revised Statutes. For election contests, see Secs. 5026 et seq. Contest of State executive and legislative offices: Secs. 39-57. Crimes against the elective franchise: Secs. 6354 et seq.

CHAPTER 1.

GENERAL PROVISIONS.

Section

344. Application of title.
345. Distribution of copies of law.

Section

346. Privilege from arrest.

Application of Title.

Sec. 344. The provisions hereinafter enacted shall regulate and govern all elections hereafter holden in the State of Idaho for election of all officers provided for by the Constitution and the laws of the State of Idaho, at either general or special elections, except school district elections, and such other elections as are in these Codes elsewhere specially provided for.

Historical: Laws 1899, 33, Sec. 1; re-enacting Laws 1890-91, 57, Sec. 1. The concluding clause is added to cover such elections as are held in irrigation districts, drainage districts, good roads districts etc., for which special provision is made.

Cited: *Hertle v. Ball* (1903) 9 Ida. 193; 72 Pac. 953; *Cunningham v. George* (1892) 3 Ida. 456; 31 Pac. 809. *Sabin v. Curtis* (1893) 3 Ida. 662; 32 Pac. 1130.

Distribution of Copies of Law.

Sec. 345. It shall be the duty of the Secretary of State to cause to be published in pamphlet form and distributed, through the county auditors of the respective counties, a sufficient number of copies of this law, and of such other laws as bear upon the subject of elections, as will place a copy thereof in the hands of all officers of elections.

Historical: Laws 1899, 33, Sec. 156; re-enacting Laws 1890-91, 57, Sec. 160. "County auditors" inserted for "county

clerks" to conform to local nomenclature.

Privilege From Arrest.

Sec. 346. Electors are privileged from arrest except for treason, felony, or breach of the peace, during their attendance on election.

Historical: Laws 1899, 33, Sec. 5; re-enacting Laws 1890-91, 57, Sec. 5. Last part of section. The first para-

graph relative to eligibility to hold office, constitutes Sec. 250 of this Code.

CHAPTER 2.

TIME FOR HOLDING ELECTIONS.

Section

347. Time for holding elections.
348. Officers to be elected: County officers.
349. Same: State officers.

Section

350. Same: Judges.
351. Same: Presidential electors.
352. Same: Precinct officers.

Time for Holding Elections.

Sec. 347. A general election shall be held in the several precincts in this State on the Tuesday succeeding the first Monday of November, A. D. 1910, and on the Tuesday succeeding the first Monday of November every alternate year thereafter.

Historical: Laws 1899, 33, Sec. 6; re-enacting Laws 1890-91, 57, Sec. 6. "1910" inserted for "1892."

Definition: The "general election" is the election at which all State officers are elected; whether an election is

general or special is determined, not by the date on which it is held nor the authority which designates such date, but by the character of the election. *Doan v. Board of Commrs. of Logan Co.* (1891) 3 Ida. 38; 26 Pac. 167.

Officers to Be Elected: County Officers.

Sec. 348. At the general election A. D. 1910, and every fourth year thereafter, there shall be elected in every county of the State, a clerk of the District Court, who is ex-officio auditor and recorder, and at said general election, and every alternate year thereafter, there shall be elected in every county of the State, the following officers, to-wit: Three county commissioners; a sheriff; county treasurer, who is ex-officio public administrator; probate judge; county superintendent of public instruction; a prosecuting attorney; a county assessor, who is ex-officio tax collector; one coroner, and one surveyor.

Historical: Laws 1899, 33, Sec. 7; re-enacting Laws 1890-91, 57, Sec. 7. "County superintendent of public instruction" inserted for "who is ex-officio county superintendent of public instruction," to conform to Const. Art. 18, Sec. 6, as amended, "Prosecuting attorney" is inserted in place of the "District Attorney," provided for in Sec. 9 of the act (Sec. 350 post).

Cited: *Castle v. Bannock Co.* (1901) 8 Ida. 124; 67 Pac. 35.

Vote for Commissioners: While commissioners are elected one from each district, the voters of the whole county should cast their votes for each of the commissioners and all the votes so cast should be counted in determining who is elected to the board. *Cunningham v. George* (1892) 3 Ida. 456; 31 Pac. 809.

Same: State Officers.

Sec. 349. At the general election, A. D. 1910, and every alternate year thereafter, there shall be elected the following State officers, to-wit: One Governor, one Lieutenant Governor, one Secretary of State, one State Treasurer, one State Auditor, one Superintendent of Public Instruction, one Attorney General, and one Inspector of Mines, and in each Representative and Senatorial district of the State such Rep-

representatives and Senators as they may severally be entitled to. Also on the first Tuesday succeeding the first Monday of November, A. D. 1910, and every alternate year thereafter, there shall be elected the number of Representatives in Congress to which the State may be entitled.

Historical: Laws 1899, 33, Sec. 8;
re-enacting Laws 1890-91, 57, Sec. 8.

Inspector of Mines inserted on author-
ity of Laws 1899, 221, Sec. 13.

Same: Judges.

Sec. 350. At the general election, A. D. 1910, and every alternate year thereafter, there shall be elected one Judge of the Supreme Court, and at said general election, and every fourth year thereafter, there shall be elected in each judicial district of the State, one District Judge.

Historical: Laws 1899, 33, Sec. 9;
re-enacting Laws 1890-91, 57, Sec. 9,
omitting the provision for the election

of a District Attorney. The prosecut-
ing attorney is provided for in Sec.
348, ante.

Same: Presidential Electors.

Sec. 351. At the general election, A. D. 1910, and every fourth year thereafter, there shall be elected such a number of Electors of President and Vice President of the United States as the State may be entitled to in the Electoral College.

Historical: Laws 1899, 33, Sec. 10;
re-enacting Laws 1890-91; 57, Sec. 10.

Same: Precinct Officers.

Sec. 352. At the general election, A. D. 1910, and every alternate year thereafter, there shall be elected in each justice's precinct, except wards in incorporated cities, two justices of the peace and one constable, and all other officers, not herein specified, that now are, or hereafter may be, created shall, unless otherwise provided, be elected on the day of the general election.

Historical: Laws 1899, 33, Sec. 11;
re-enacting Laws 1890-91, 57, Sec. 11.

Cited: State v. Vineyard (1903) 9
Ida. 134; 72 Pac. 824.

Justices in Cities: This section has
no application to the formation of
justices' precincts and the provision
for the election of two justices in all

precincts "except wards in incorpo-
rated cities," does not constitute such
wards justices' precincts, nor prohibit
the county commissioners from es-
tablishing precincts within such cities.
Johnston v. Savidge (1905) 11 Ida.
204; 81 Pac. 616.

CHAPTER 3.

NOTICES OF ELECTION.

Section	Section
353. Election proclamation.	356. Advertisement of special ques- tions.
354. Notices of election.	
355. Same: Posting notices.	

Election Proclamation.

Sec. 353. At least forty days before each general election, and whenever he orders a special election, the Governor must issue an election proclamation under his hand and the great seal of the State of Idaho, and transmit copies thereof to the board of commissioners, of the counties in which such elections are to be held.

Such proclamation must contain a statement of the time of election and of the offices to be filled.

Historical: Laws 1899, 33, Secs. 12, 13; re-enacting Laws 1890-91, 57, Secs. 20, 21.

Notices of Election.

Sec. 354. The clerks of the several boards of county commissioners must, at least twenty days before any general election, make out and transmit by registered mail to the registrar of each election precinct, three notices to be as nearly as circumstances will admit of as follows:

Notice is hereby given that on the Tuesday following the first Monday of November next, at the (here designate polling place) in the County of, an election will be held for members of Congress, State, county, district and precinct officers (naming the candidates and offices to be filled as the case may be), which election shall be open at eight o'clock in the morning and will continue until seven o'clock in the evening of the same day. Dated this.....day of....., A. D. 19..... (as the case may be).

(Signed)

.....
Clerk of the Board of County Commissioners.

Historical: Laws 1899, 33, Sec. 14; re-enacting Laws 1890-91; 57, Sec. 22.

Same: Posting Notices.

Sec. 355. The registrar aforesaid to whom such notices are transmitted as aforesaid, must cause to be posted, in three of the most public places of each election precinct, the notices referring to such election precinct, at least fifteen days previous to the time of holding any general election. Said notices shall be posted as follows: One at the house or place where the election is authorized to be held, and the others at two of the most public and suitable places in the precinct.

Historical: Laws 1899, 33, Sec. 15; re-enacting Laws 1890-91, 57, Sec. 23; amended Laws 1897, 29, Sec. 2.

Advertisement of Special Questions.

Sec. 356. Whenever a proposed Constitution or Constitutional amendment, or other question, is to be submitted to the people of the State for popular vote, the Secretary of State shall duly, and not less than thirty days before election, certify the same to the auditor of each county in the State. Questions to be submitted to the people of a county or municipality shall be advertised in some newspaper of general circulation in the county or town to be affected at least twice, and twenty days before election.

Historical: Laws 1899, 33, Sec. 27; re-enacting Laws 1890-91; 57, Sec. 36.

CHAPTER 4.

QUALIFICATIONS OF VOTERS.

Section

357. Qualifications of voters.

358. Disqualifications.

Section

359. Soldiers, sailors, students and inmates of asylums.

Section

360. Prostitutes and inmates of houses of ill-fame.

361. Same: Examination by registrar.

Section

362. Same: Challenge of proposed voter.

363. Same: Penalty for false statement.

Qualifications of Voters.

Sec. 357. Every person over the age of twenty-one years, possessing the qualifications following, shall be entitled to vote at all elections: He shall be a citizen of the United States and shall have resided in this State six months immediately preceding the election at which he offers to vote, and in the county thirty days: *Provided*, That no person shall be permitted to vote at any county seat election who has not resided in the county six months, and in the precinct ninety days, where he offers to vote; nor shall any person be permitted to vote at any election for the division of the county, or striking off from any county any part thereof, who has not the qualifications provided for in Section 3, Article 18, of the Constitution; nor shall any person be denied the right to vote at any school district election, nor to hold any school district office on account of sex.

Historical: Laws 1899, 33, Sec. 2; re-enacting Laws 1890-91, 57, Sec. 2; omitting the word "male" in the first line on the authority of the amendment to Const. Art. 6, Sec. 2.

Cross Reference: Qualifications of electors: Const. Art. 6, Sec. 2. Legislature may prescribe qualifications additional to those prescribed by the Constitution: Const. Art. 6, Sec. 4.

Disqualifications.

Sec. 358. No person is permitted to vote who is under guardianship, idiotic or insane, or who has at any place been convicted of treason, felony, embezzlement of public funds, bartering or selling, or offering to barter or sell, his vote, or purchasing, or offering to purchase, the vote of another, or other infamous crime, and who has not been restored to the right of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

Historical: Laws 1899, 33, Sec. 3; re-enacting Laws 1890-91, 57, Sec. 3; amended Laws 1893, 35, Sec. 1; Laws 1895, 7, Sec. 1.

Cross Reference: Similar provision with additional clauses disfranchising polygamists: Const. Art. 6, Sec. 3.

Test Oath—Constitutionality: A

territorial statute withholding the elective franchise from polygamists or members of any organization which teaches or encourages polygamy and prescribing a test oath is not repugnant to the federal Constitution. *Wooley v. Watkins* (1889) 2 Ida. 590; 22 Pac. 102.

Soldiers, Sailors, Students and Inmates of Asylums.

Sec. 359. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State or of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense.

Historical: Laws 1899, 33, Sec. 4; re-enacting Laws 1890-91, 57, Sec. 4.

Cross Reference: Similar provision: Const. Art. 6, Sec. 5.

Prostitutes and Inmates of Houses of Ill-Fame.

Sec. 360. No common prostitute, or person who keeps or maintains, or is interested in keeping or maintaining, or who resides in

or is an inmate of, or frequents or habitually resorts to, any house of prostitution or of ill-fame, or any other house or place commonly used as a house of prostitution or of ill-fame, or as a house or place of resort of lewd persons for the purpose of prostitution or lewdness, or who, being male and female, do lewdly and lasciviously cohabit together, shall be permitted to register as a voter or to vote at any election in this State, and any such person who shall so register or vote, or offer or attempt to so register or vote, shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Historical: Laws 1907, 170, Sec. 1.

Same: Examination by Registrar.

Sec. 361. Whenever any person within any of the prohibited classes mentioned in the preceding section shall offer himself or herself for registration, it shall be the duty of the registrar, in addition to offering to said person any elector's oath provided by law, to examine such person as to his or her qualifications under the preceding section, and if such person is not qualified by reason of being within the prohibited class, it shall be the duty of the registrar to refuse to register such person, and the registrar shall keep a brief memorandum in writing showing all such examinations and his determination thereon.

Historical: Laws 1907, 170, Sec. 2.

Same: Challenge of Proposed Voter.

Sec. 362. If any person within any of the prohibited classes mentioned in Section 360, shall be registered and shall offer to vote, he or she may be challenged for being within such prohibited class or classes, and thereupon such person shall be examined as to his or her qualifications under said section, and if the board of election is satisfied that such person is within any such prohibited class, his or her vote shall not be received.

Historical: Laws 1907, 170, Sec. 3.

Same: Penalty for False Statement.

Sec. 363. If any person within any of the prohibited classes mentioned in Section 360 shall make any false answer to any such examination, either by such registrar or on such challenge before the board of election, it shall be considered and held to be a separate and distinct offense from any offense mentioned in Section 360, and on conviction thereof such person shall, in addition to any penalty incurred by any provision of said section, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Historical: Laws 1907, 170, Sec. 4.

CHAPTER 5.

ELECTION PRECINCTS, JUDGES AND CLERKS.

Section

364. Establishment of election precincts.

Section

365. Changing boundaries of precincts.

Section	Section
366. Designation and plan of polling places.	369. Judges to appoint clerks.
367. Appointment of judges and distributing clerks.	370. Compensation of judges and clerks.
368. Same: Vacancies filled by election.	

Establishment of Election Precincts.

Sec. 364. The board of commissioners of each county must establish a convenient number of election precincts therein.

Historical: Laws 1899, 33, Sec. 28;
re-enacting Laws 1890-91, 57, Sec. 37.

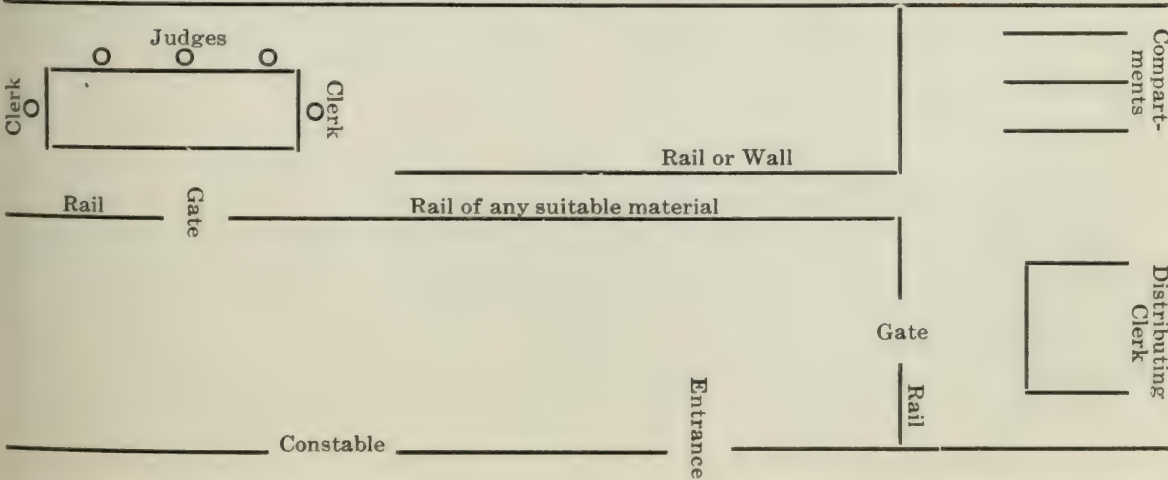
Changing Boundaries of Precincts.

Sec. 365. The board may, from time to time, change the boundaries of, create new, or consolidate established, precincts; but they must not alter or change any election precinct, or change the place of holding elections in any precinct after their regular July meeting next preceding any election: *Provided*, That the precincts and wards established, and the places designated in which to hold elections at the time of the taking effect of this title, shall so remain until changed.

Historical: Laws 1899, 33, Sec. 29;
re-enacting Laws 1890-91, 57, Sec. 38.

Designation and Plan of Polling Places.

Sec. 366. The county commissioners of each county, at their meeting in July next preceding any general election, shall designate and appoint suitable polling places, throughout the county, and shall cause the same to be suitably provided with a sufficient number of voting shelves or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within ten feet of the ballot boxes and of such voting shelves, places or compartments as are herein provided for. The arrangement shall be such that neither the ballot boxes nor the voting shelves or compartments shall be hidden from view of those just outside the said guard rail, and such polling places shall be as near as practicable in the following form:



The number of such voting shelves or compartments shall not be less than one for every fifty electors, or fraction thereof, registered in the precinct, and the expense of providing such polling places, compartments, guard rails, and all necessary supplies, shall be a public charge, and shall be provided for in the same manner as all other election expenses. Each voting shelf or compartment shall be kept provided with proper supplies and conveniences for marking the tickets. At their regular meeting in July next preceding any election, the board of county commissioners of each county shall, as far as necessary, alter or divide the election precincts in such manner that each election precinct shall not contain more than six hundred voters: *Provided*, That in precincts containing less than twenty-five registered voters the election may be conducted under the provisions of this title without the preparation of such booths or compartments as are required in this section.

In all municipal elections the duties specified in this section as devolving on the county commissioners, shall devolve on the officers in each city or town whose duty it is to designate and appoint polling places therein.

Historical: Laws 1890-91, 57, Sec. 51; re-enacted Laws 1899, 33, Sec. 42; amended Laws 1905, 317, Sec. 1 com-

| bined with Laws 1899, 33, Sec. 43; re-enacting Laws 1890-91, 57, Sec. 51.

Appointment of Judges and Distributing Clerks.

Sec. 367. It is the duty of the county commissioners, at their regular session in July next preceding a general election, to appoint four capable and discreet persons possessing the qualifications of electors, three of such persons to act as judges of election, and one to act as distributing clerk of election, at each election precinct; and the clerk of the board must make out and deliver to the sheriff of the county, immediately after the appointment of such judges and distributing clerk, a notice thereof, in writing, directed to the judges and distributing clerks so appointed; and the sheriff, within ten days of the receipt of said notice, must serve the same upon each of the said judges and distributing clerks of election by registered mail. If in any precinct any of said judges or distributing clerk do not serve, the voters of said precinct may elect a judge or judges or distributing clerk to fill the vacancy on the morning of the election, to serve at such election. The selection of officers must, as nearly as practicable, represent all the different political parties or principles represented by the nominees in each county.

Historical: Laws 1899, 33, Secs. 40, 41, re-enacting Laws 1890-91, 57, Secs. 49, 50.

Same: Vacancies Filled by Election.

Sec. 368. If in any precinct any of said judges or distributing clerk do not serve, the voters of said precinct may elect a judge or judges or distributing clerk to fill the vacancy, on the morning of the election, to serve at such election. The election of officers must, as nearly as practicable, represent all the different political parties or principles represented by the nominees in each county.

Historical: Laws 1899, 33, Secs. 62, 63; re-enacting Laws 1890-91, 57, Secs. 71, 72.

Judges to Appoint Clerks.

Sec. 369. The judges must choose two persons having similar qualifications with themselves to act as clerks of the election.

The said judges and distributing clerk shall be and continue judges and distributing clerk of all elections of civil officers to be held in their respective wards or precincts until other judges and distributing clerk are appointed, and the said clerks of election may continue to act as such during the pleasure of the judges of election. The county commissioners must, from time to time, fill all vacancies which may occur in the office of judges of election and distributing clerk at any election precinct within their respective counties.

Historical: Laws 1899, 33, Sec. 67; re-enacting Laws 1890-91, 57, Sec. 76.

Compensation of Judges and Clerks.

Sec. 370. It is the duty of the clerk of the board of commissioners of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election are entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners must order the compensation paid out of the county treasury. The compensation of judges of election and clerks is four dollars per day, and of constables, on duty at polling places, three dollars per day.

Historical: Laws 1899, 33, Sec. 57; re-enacting Laws 1890-91, 57, Sec. 66.

CHAPTER 6.

PRIMARY ELECTIONS.

Section	Section
371. Primary election defined.	377. Result of election.
372. Notice of primary election.	378. Delegates not to give proxies.
373. Time for holding election.	379. Delegates fraudulently elected to be denied seats.
374. Conduct of election.	380. Penalty for violations of chapter.
375. Check list and ballot box may be borrowed.	381. Application of chapter.
375a. Persons entitled to vote.	
376. Oath of office: Challenge of voters.	

Primary Election Defined.

Sec. 371. A primary election, within the meaning of this chapter, is an election held in any county, city, town or precinct in the State of Idaho by any political party, for the purpose of electing delegates to political conventions, and the provisions hereof shall apply only to general State and county, and general city or town, elections.

Historical: Laws 1903, 360, Sec. 1.

Notice of Primary Election.

Sec. 372. When any political party desires to hold a primary elec-

tion in any county, city or town, it is the duty of the duly authorized committee of such political party for such county, city or town, to publish a notice in a newspaper of general circulation and of the same political affiliation, if there be one in the county, once a week for at least two consecutive weeks, the first publication of which must be at least twenty, and not over thirty, days prior to the day appointed for such primary election; also to post at least two notices, fifteen days prior to the primary election, in public places, in each voting precinct in the county, city or town. Such notices must give the date when, the hours during which, and the place where, the primary election will be held, the number of delegates each election precinct is entitled to in convention, and the offices for which candidates are to be nominated in such convention.

Historical: Laws 1903, 360, Sec. 2.

Time for Holding Election.

Sec. 373. Such primary election must be held in each voting precinct in the county, city or town, on the same Monday afternoon, commencing in the county precincts at three p. m. and continuing until six p. m., and in city or town precincts it must commence at two p. m. and continue until seven p. m.

Historical: Laws 1903, 360, Sec. 3.

Conduct of Election.

Sec. 374. When the hour for holding such primary election arrives it shall be called to order by the chairman or secretary of the precinct committee, or, in their absence, by some qualified voter of the party holding such primary election. The qualified voters present, who are members of the political party holding such primary, shall choose from their number a chairman, two clerks and two judges of election, who shall not be selected in the interest of any particular candidate or candidates before the convention for which the delegates are to be elected. Such officers of the primary may be elected by a viva voce vote, but the delegates to the convention must be elected by ballot, and each qualified voter at such primary shall have on his ballot, which may be written or printed or partly written or partly printed, as many names for delegates as such precinct is entitled to in convention: *Provided*, That if any ballot contains more names of delegates than such precinct is entitled to, such ballot shall be void, and must not be counted. Also when it shall appear that the same person casts more than one ballot, as when two or more ballots are folded together, or from other clear evidence, all such ballots are void and must not be counted.

If primary elections for more than one political party are held on the same day they must not be held in the same room, or in the same immediate locality.

Historical: Laws 1903, 360, Sec. 4.

Check List and Ballot Box May Be Borrowed.

Sec. 375. For the information and assistance of the officers of the primary election in city or town precincts, where the voters are so

numerous as not to be well known to such officers, the county committee of the political party holding such primary may borrow from the proper county custodian a check list of the voters of each of such precincts, used at the last general election, also a ballot box. When such county committee shall deem best, the provisions of this section may be applied to any precinct in the county. In any precinct where the county official ballot boxes are not available, any convenient box or receptacle may be used. Any such check list or ballot box so borrowed must be promptly returned to the proper county custodian upon the close of the primary election.

Historical: Laws 1903, 360, Sec. 5.

Persons Entitled to Vote.

Sec. 375a. Only regularly qualified voters who are entitled to vote at such primary elections are permitted to vote thereat, or to take part therein, and it is unlawful for any person who was not affiliated at the last general election with the party holding the primary, or who has not resided for at least thirty days in the election precinct where the primary election is held, to vote or to take any part in such primary election: *Provided*, That one who since the last election has become of age, may vote if otherwise qualified.

Historical: Laws 1903, 360, Sec. 6.
The words "with the party holding

the primary" are inserted to express the obvious intent of the section.

Oath of Office: Challenge of Voters.

Sec. 376. It is the duty of the chairman to administer the oath of office to the clerks and judges elected, to the effect that each will faithfully perform the duties imposed upon him by law, and one of the clerks shall thereupon administer a like oath to the chairman. When any person offering to vote is challenged, which may be done by any one qualified to vote at such primary, who shall state the ground of his challenge, or when any of the officers of the election shall suspect that any person is not qualified to vote, the chairman shall administer to such person so challenged an oath to the effect that he has resided in the election precinct for the past thirty days; that by the next general election he will have resided in the State for at least six months; that at the last general election he was affiliated with the (name the party) party; that he has not during this year voted at any other primary election; that he is in all respects qualified to vote at this primary, and shall further particularly specify in the oath the ground or challenge or objection made to such voter. The officers of election may, in addition to administering such oath, briefly, orally examine under oath any person as to his qualifications as a voter, and any one refusing to take such oath or to testify, or who, by a majority of the election officers, is found disqualified, shall not be allowed to vote. It is the duty of the clerks of the election to keep written minutes of the proceedings of such primary election. It is the duty of the judges to receive and deposit in the ballot box the ballots of the voters qualified under the provisions of this chapter, and of the clerks to enter in two alphabetical lists the names, consecutively numbered, of the voters, and, when for any cause any of

the officers of the election deems it best, the place of residence of any voter shall be placed opposite his name upon said lists. No person shall, during any calendar year, vote at the primary election of more than one political party.

Historical: Laws 1903, 360, Sec. 7. | inserted before "particularly specify" to
The words "shall further" are in- | complete the sense.

Result of Election.

Sec. 377. At the close of the election it is the duty of the judges to count the ballots and report the same to the chairman, who shall then publicly announce the result. Those persons receiving the highest number of votes, to the number of delegates allowed, shall be declared elected. Tie votes or results must be settled by lot. When it is determined who are elected delegates, they shall be furnished with proper credentials, certifying to their election, which shall be signed by the chairman and countersigned by the clerks. The officers of election must then, in the presence of any qualified voters present, carefully wrap into a package, which must be sealed, the ballots, the lists of voters, and the written minutes, which must include a statement showing the number of votes cast for each candidate for election as delegate, and deliver the same to the chairman, who shall cause such package to be duly delivered to the convention to which the delegates are accredited.

Historical: Laws 1903, 360, Sec. 8.

Delegates Not to Give Proxies.

Sec. 378. In case any delegate elected to a convention fails to appear and serve, he shall not give his proxy to any one, but the vote of such delegate must be cast by the balance of the delegation from the precinct, and if no delegate appears from the precinct, such precinct must be without any representation.

Historical: Laws 1903, 360, Sec. 9.

Delegates Fraudulently Elected to Be Denied Seats.

Sec. 379. When at any primary election such irregularities or frauds on the part of the voters, or of the officers of election, or of any other persons, shall occur, resulting in the election of delegates, which the convention to which they are elected is clearly satisfied would not have been elected had the primary been fairly and honestly conducted, the convention must deny any delegate, so fraudulently elected, a seat in the convention.

Historical: Laws 1903, 360, Sec. 10.

Penalty for Violations of Chapter.

Sec. 380. Any person voting at any primary election, when under the provisions of this chapter he is disqualified to so vote, or who falsely takes any oath or falsely testifies, or who violates any oath taken, or any officer of election who fraudulently does anything as such officer, or who fraudulently fails to perform any duty devolved upon him by this chapter, or any person who violates any of the provisions of this chapter, is guilty of a misdemeanor, and on con-

viction thereof shall be punished by a fine of not less than twenty-five dollars and not to exceed five hundred dollars, or by imprisonment for not less than thirty days nor to exceed six months, or by both such fine and imprisonment.

Historical: Laws 1903, 360, Sec. 12.

Application of Chapter.

Sec. 381. The application of this chapter to any political party, which at the last general election cast less than ten per cent of the whole number of votes cast, is optional with such party. This chapter does not prevent any political party from providing and directing that the delegates elected under the provisions of this chapter to the county convention, may select delegates to the State convention.

Any expense incurred in the enforcement of this chapter shall be borne by the political party holding the primary election.

Historical: Laws 1903, 360, Sec. 11.

CHAPTER 7.
NOMINATIONS.

Section	Section
382. Nominations by convention.	387. Preservation of certificates.
383. Certificate of nomination.	388. Time for filing certificates.
384. Certificates to be filed where.	389. Names of candidates to be certified by Secretary of State.
385. Nominations other than by convention.	390. Declination of nomination.
386. Restrictions on independent nominations.	391. Mode of filling vacancies.
	392. Use of stickers on tickets.

Nominations by Convention.

Sec. 382. Any convention or primary meeting, as hereinafter defined, held for the purpose of making nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public office to be filled by election within the State. A convention or primary meeting within the meaning of this chapter, is an organized assemblage of electors or delegates representing a political party or principle.

Historical: Laws 1899, 33, Sec. 16; re-enacting Laws 1890-91, 57, Sec. 25.	number of people requisite to constitute a convention or primary meeting under the statute. <i>Baker v. Scott</i> (1895) 4 Ida. 596; 43 Pac. 76.
What Constitutes a Convention: This section does not prescribe the	

Certificate of Nomination.

Sec. 383. All nominations made by such convention or primary meeting shall be certified as follows: The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his residence, his business, and the office for which he is named, and shall designate in not more than five words, the party or principle which such convention or primary meeting represents, and it shall be signed by the presiding officer and secretary of such convention or primary meeting, who shall add to their signatures their respective places of residence and their business. Such certificates, made out as herein required, shall be delivered by the secretary

or president of such convention or primary meeting to the Secretary of State or to the county auditor, as hereinafter required.

Historical: Laws 1899, 33, Sec. 17;
re-enacting Laws 1890-91, 57, Sec. 26.

Certificates to Be Filed Where.

Sec. 384. Certificates of nominations of candidates for offices to be filled by the electors of the entire State, or of any division or district greater than a county, shall be filed with the Secretary of State. Certificates of nomination for county and precinct officers shall be filed with the auditors of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal offices shall be filed with the clerks of the respective municipal corporations wherein the officers are to be elected.

Historical: Laws 1899, 33, Sec. 18;
re-enacting Laws 1890-91, 57, Sec. 27.

Cited: *Cunningham v. George*
(1892) 3 Ida. 456; 31 Pac. 809.

Nominations Other Than by Convention.

Sec. 385. Candidates for public office may be nominated, otherwise than by convention or primary meeting, in the following manner: A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in Section 383, shall be signed by electors residing within the district or political division in and for which the officer or officers are to be elected, in the following numbers: The number of signatures, when the nomination is for a State office, shall not be less than three hundred; for the district office, or subdivision of the State including two or more counties, the number of signatures shall not be less than one hundred and fifty; for a county office, not less than fifty; and for a township, precinct or ward office, not less than ten: *Provided*, That the said signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence and his business. Such certificates may be filed as provided for in Section 384, in the same manner and with the same effect as a certificate of nomination made by a party convention or primary meeting: *Provided*, That the registrar of each precinct or ward, as the case may be, shall certify to the Secretary of State, the county auditor, or the clerk of the municipality, as the case may be, that all the signers of such certificates are qualified electors and registered according to law for the ensuing election.

Historical: Laws 1899, 33, Sec. 19;
re-enacting Laws 1890-91, 57, Sec. 28. The section numbers in the body of the section are taken from the act of 1890-91, to which they obviously referred. The numbers of the sections were changed in the re-enactment, but the internal cross references were overlooked.

Independent Candidates: Where a petition nominating a candidate for office is signed by a sufficient number of electors and is filed in due form within the time required by law, the candidate named thereon is entitled to

have his name appear on the official ballot as an independent candidate for the office designated, but not upon the ticket of any particular party. *Phillips v. Curtis* (1894) 4 Ida. 193; 38 Pac. 405.

Same—Number of Signers: Since members of the Legislature are not officers required to be voted for by the electors of the entire State, they do not come within the class who, when nominated as independent candidates, require a petition to be signed by 300 electors. *ib.*

Same: Restrictions on Independent Nominations.

Sec. 386. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating more than one person for each office to be filled, and no person shall accept a nomination to more than one office.

Historical: Laws 1899, 33, Sec. 20;
re-enacting Laws 1890-91, 57, Sec. 29.

Signers of Petition: Persons who participated in nominating one person for an office at a political convention

of one party, cannot afterwards sign a petition nominating another person belonging to another party for the same office. *Phillips v. Curtis* (1894) 4 Ida. 193; 38 Pac. 405.

Preservation of Certificates.

Sec. 387. The Secretary of State, the auditors of the several counties, and the clerks of the several municipal corporations, shall cause to be preserved, in their respective offices, for one year, all certificates of nominations filed in their respective offices under the provisions of this chapter. All such certificates shall be open to public inspection under the proper regulations to be made by the officers with whom the same are filed.

Historical: Laws 1899, 33, Sec. 21;
re-enacting Laws 1890-91, 57, Sec. 30.

Time for Filing Certificates.

Sec. 388. Certificates of nomination to be filed with the Secretary of State shall be filed not more than sixty days and not less than thirty-five days before the day fixed by law for the election of the persons in nomination. Certificates of nomination herein directed to be filed with the county auditor shall be filed not more than sixty days and not less than twenty-five days before election. Certificates for the nomination of candidates for municipal offices shall be filed with the clerks of the respective municipal corporations not more than thirty days and not less than ten days previous to the day of election: *Provided*, That the time specified for filing certificates of nominations, as provided in this section, shall not be held to apply to nominations for special elections to fill vacancies caused by death, resignation or otherwise.

Historical: Laws 1899, 33, Sec. 22;
re-enacting Laws 1890-91, 57, Sec. 31.

Names of Candidates to Be Certified by Secretary of State.

Sec. 389. Not less than thirty days before an election to fill any public office, the Secretary of State shall certify to the county auditor of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated for such office, as specified in the certificates of nomination filed with the Secretary of State.

Historical: Laws 1899, 33, Sec. 23;
re-enacting Laws 1890-91, 57, Sec. 32.

Declination of Nomination.

Sec. 390. Whenever any person nominated for public office, as in this chapter provided, shall, at least thirty days before election, except

in the case of municipal elections, in a writing signed by him, and certified to by the registrar of the precinct where the person nominated resides, notifying the officer with whom the certificate nominating him is by this chapter required to be filed, that he declines such nomination, such nomination shall be void. In municipal elections such declination must be made at least ten days before the election.

Historical: Laws 1899, 33, Sec. 24; re-enacting Laws 1890-91, 57, Sec. 33.

Mandatory Provision: The provision of this section requiring declinations of nominees*to be fined at least thirty days before election is mandatory, and

the auditor may refuse to accept a declination presented for filing within thirty days of the election. *Napton v. Meek* (1902) 8 Ida. 625; 70 Pac. 945.

Mode of Filling Vacancies.

Sec. 391. Should any person so nominated die before the printing of the tickets, or decline the nomination as in this chapter provided, or should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and shall have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the Secretary of State, he shall, in certifying the nominations to the various county auditors, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And in the event that he has already sent forth his certificate, he shall forthwith certify to the auditors of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom such nominee is substituted.

Historical: Laws 1899, 33, Sec. 25; re-enacting Laws 1890-91, 57, Sec. 34.

Cited: *Baker v. Scott* (1895) 4 Ida. 596; 43 Pac. 76.

Use of Stickers on Tickets.

Sec. 392. When any vacancy occurs before election day and after the printing of the tickets, and any person is nominated according to the provisions of this chapter to fill such vacancy, the officer whose duty it is to have the tickets printed and distributed, shall thereupon have printed a requisite number of stickers, and shall mail them by registered letter to the judges of election in the various precincts interested in such election. The distributing clerk, whose duty it is made by the provisions of this title to distribute the tickets, shall

affix such stickers in the proper place on each ticket before it is given out to the elector.

Historical: Laws 1899, 33, Sec. 26;
re-enacting Laws 1890-91, 57, Sec. 35.

CHAPTER 8.
REGISTRATION OF ELECTORS.

Section	Section
393. Appointment of registrars.	398. Registrar to estimate tickets re- quired.
394. Registration notices, books and supplies.	399. Transfer certificates.
395. Oath of registrar.	400. Mandate to compel registration.
396. Registration of voters: Elector's oath: Check lists.	401. Compensation of registrar.
397. Preservation of registrar's pa- pers.	

Appointment of Registrars.

Sec. 393. The board of county commissioners of each county of the State must, at its regular meeting in July, next preceding each general election, appoint a registrar for each election precinct in the county, who must be a qualified elector, resident of such precinct, and otherwise a proper person and qualified to perform the duties of such office, and such registrar may hold his office until his successor is appointed and qualified. When any registrar fails to act, or the office becomes vacant, the said board, if in session, must appoint another registrar; or if said board is not in session, the chairman of the board must appoint; and should a registrar not be appointed, or from any cause, none should act, the electors may, on the second Saturday of September at one o'clock p. m. next preceding any general election to which this title is applicable, meet at the place in the precinct appointed by said board for the holding of such election, or should the board fail to appoint a place, then at the place where the last general election was held, and elect a registrar.

Historical: Laws 1890-91, 57, Sec.
40; re-enacted Laws 1899, 33, Sec. 31;
amended Laws 1903, 354, Sec. 1.

Registration Notices, Books and Supplies.

Sec. 394. The said board must, prior to the first day of August next preceding any general election, cause notice to be given for not less than fifteen days, by publication in some newspaper published in the county if there be one, otherwise by at least three notices posted up in different parts of the county, one of which must be at the court house door, giving the names and general description of election precincts, the name of the registrar for each precinct, and the time during which registration may be made, which shall be, for every general election, during each Saturday including and from the first day of September, to and including the Saturday next preceding the election. At the time of or before giving such notice, the board must furnish to each registrar two books, one to be known as the "election registrar" for the registry of qualified electors, and

the other for the registry of rejected applicants. Each of such books must be ruled and headed substantially as follows:

Number.	Name of Elector.	Dates of Registration or Dates of Rejection.	Age	Where Born.	Description of Residence.	Certificate of Naturalization. Exhibit—Yes or No.	Remarks.

At the same time the said board must furnish to the registrar the blank notices, certificates, oaths and all other blanks, books, and papers, needed and required to perform the duties of his office as such registrar.

Historical: Laws 1890-91, 57, Sec. 41; re-enacted Laws 1899, 33, Sec. 32; | amended Laws 1903, 354, Sec. 1; amended Laws 1905, 380, Sec. 1.

Oath of Registrar.

Sec. 395. Before entering upon the duties of his office, each registrar must take and subscribe, before any officer authorized to administer oaths, the official oath required of all officers acting under the laws of the State of Idaho, which, when so taken and subscribed, must be by him filed with the clerk of the board of county commissioners, and said registrar may thereupon register his own name in the elector's register.

Historical: Laws 1899, 33, Sec. 33; re-enacting Laws 1890-91, 57, Sec. 42.

Registration of Voters: Elector's Oath: Check Lists.

Sec. 396. He must also, prior to the time of commencement of registration, post notices in at least three public places in different parts of his precinct, most likely to give notice to the inhabitants thereof, giving the time, days and hours during, and the place at which he will be ready to receive and hear applications for registration, and he must thereafter, on the days named by him in said notice, be at the place designated, from the hours of nine o'clock a. m. to five o'clock p. m., and from seven o'clock p. m. to nine o'clock p. m., and receive and register the names of all persons applying, who are, or will be on the day of election for which registration is made, entitled to vote thereat. He must, also, on any other day of the week, except holidays, during said time of registration, register any such elector who may find and apply to him at his place of registration, and he may, at any time or place during said time of registration, register any such elector of his precinct. He may, at any time, examine under oath any applicant as to his qualifications,

and he must examine and permit any qualified elector of his county to examine any applicant for registration, either when such applicant is not known to the registrar to be a qualified elector, or when any such qualified elector challenges such applicant and specifies his cause of challenge.

When any applicant claims to be a naturalized citizen the production by him of his certificate of naturalization is prima facie evidence of citizenship. If he cannot produce such certificate, he must state, under oath, positively, the time when, and place and court where, he was naturalized; and he must by his own, or other testimony, make it satisfactorily appear to such registrar that he has been duly naturalized and that his certificate thereof has been lost, destroyed or is beyond his control; and thereupon he must be deemed a citizen, and entitled to registration if otherwise qualified. All examinations before such registrar must be reduced to writing, when desired by such applicant, challenging elector or registrar. Such examination for any one applicant shall not exceed one-half hour, without the consent of the registrar. If any applicant refuses to answer all questions, give all information under his control, take all other oaths, and do all other acts and things required of him by law, his application must be rejected by the registrar.

The registrar must, before he registers any applicant, require him to take and subscribe the oath to be known as the "Elector's Oath," which is as follows:

ELECTOR'S OATH.

I do swear (or affirm) that I am a citizen of the United States, of the age of twenty-one years, or will be the day of A. D. 19..... (naming the date of the next succeeding election); that I have (or will have) actually resided in this State for six months, and in this county for thirty days next preceding the next ensuing election (in case of any election requiring a different time of residence so make it); that I have never been convicted of treason, felony, embezzlement of public funds, bartering or selling or offering to barter or sell my vote, or purchasing or offering to purchase the vote of another, or other infamous crime, without thereafter being restored to the rights of citizenship; that I will not commit any act in violation of the provisions in this oath contained; that I am not now registered or entitled to vote at any other place in this State; that I do regard the Constitution of the United States and the laws thereof, and the Constitution of this State and the laws thereof, as interpreted by the courts, as the supreme law of the land; (when made before a judge of election add: "and I have not previously voted at this election,") so help me God.

(Signed)

Subscribed and sworn to before me this day of
A. W. 19.....

Registrar of Precinct, County, Idaho.

When the registrar admits any one to registration he must enter, in the proper column of the "Elector's Register," the number, the name in full (except any middle name, which may be by initial),

date of registry, age, place of nativity and residence of the elector so admitted. The residence must be so described by giving the house, street, ward, or part of the precinct he resides in, that it may be easily found; also it shall be stated, if a naturalized citizen, whether or not he produced his certificate, and the registrar may, in the column of remarks, add any pertinent notes.

He must also enter the names, with statements similar to the above, of all persons who are refused registration, in the books kept for that purpose, and therein state the reason of such refusal.

During the time between the last day of registration and the day of election each registrar must prepare for his "Elector's Register" two "check lists" of all the names registered by him, arranged alphabetically according to the surname, placing on the left of the name the same number it bears in the "Elector's Register," and on the right of the column of names, a blank column in which to indicate by the word "voted" when the elector votes; said "check lists" must have a heading showing for what election it was prepared and used; they must be carefully prepared without interlineations, in legible writing or typewriting, certified and sworn to by the registrar, and, not later than the day next preceding the election, he must deliver to one of the judges of election of his precinct his "Elector's Register," and the register containing the names of those refused registration, and to each of the other two judges, who are not of the same political party, a copy of said "check lists," and such judges must, as the electors vote, write the word "voted" opposite their names in said "check lists," while the clerks of election keep the record of the electors voting as elsewhere provided in this title.

Historical: Laws 1890-91, 57, Sec. 43; re-enacted Laws 1899, 33, Sec. 34; amended Laws 1903, 354, Sec. 1; amended Laws 1905, 380, Sec. 1.

Cited: *Wilson v. Bartlett* (1900) 7 Ida. 271; 62 Pac. 416.

Power to Administer Oath: This section confers upon the registrar the power to administer oaths. *Territory v. Anderson* (1889) 2 Ida. 573; 21 Pac. 417.

Preservation of Registrars' Papers.

Sec. 397. All persons offering to vote at any election are subject to challenge, as provided by the election laws, but registration of any elector's name is prima facie evidence of his right to vote, and no person shall vote unless he is first registered.

Each registrar, after so preparing his "check lists," must arrange the "Elector's Oaths" taken before him in the order the names of the electors who took them appear upon the "check lists," and attach them together, putting the names under each letter in a separate package; and all such oaths, certificates and written testimony taken by the registrar, and the register books of electors and persons rejected, delivered to said judges, must all be transmitted, and other election returns, to the clerk of the board of county commissioners, who must preserve the same for at least one year.

Historical: Laws 1899, 33, Sec. 35; re-enacting Laws 1890-91, 57, Sec. 44.

Cited: *Wilson v. Bartlett* (1900) 7 Ida. 271; 62 Pac. 416.

Registrar to Estimate Tickets Required.

Sec. 398. Each registrar must, twenty-five days previous to the

day of election, notify the clerk of the board of county commissioners of his county of the probable number of tickets required for the precinct of which he is registrar, basing his estimate upon the number of registered electors, allowing a sufficient number for contingencies.

Historical: Laws 1899, 33, Sec. 36;
re-enacting Laws 1890-91, 57, Sec. 45.

Transfer Certificates.

Sec. 399. When a registered elector desires to remove from a precinct where he is registered, he may, at any time before the registrar has closed his registration books, apply to such registrar to have his name stricken from the register, and the registrar must then strike the name of such elector from the register, and shall deliver to said elector a transfer certificate substantially in the following form, to-wit:

TRANSFER CERTIFICATE.

"This certifies that _____ was on the _____ day of _____, 19_____, duly registered in _____ Precinct, in the County of _____, State of Idaho; and that at his own request his name has been this day erased from the official register of said precinct.

"Witness my hand this _____ day of _____, 19_____

"Registrar of _____ Precinct, _____ County, Idaho."

Such transfer certificate shall entitle the elector named therein to be registered in any other precinct in the same county, if it be filed with the registrar of such other precinct at any time before the close of the last day of registration.

Any elector who has taken out a transfer certificate as in this section provided, may personally file the same with the registrar of the precinct in which he desires to register and vote, or he may send his transfer certificate to such registrar by registered mail. If the elector file his transfer certificate personally, he shall be treated as any other applicant for registration; if the elector send his transfer certificate by mail to the registrar, his name shall be entered in the official register and check lists; and on the check lists, opposite the name of each elector who has filed a transfer certificate personally, the registrar shall enter the words, "Registered by certificate," and opposite the name of each elector who has sent his transfer certificate by mail the registrar shall enter, "Registered by certificate by mail," and the registry number appearing upon the envelope in which the transfer was sent to him. Upon the day of election, when an elector registered by transfer certificate by mail offers to vote, the judges of election, or one of them, shall, before receiving and depositing the ballot, administer to such elector the same oath that is required to be taken before registrars by all electors applying for registration, and shall require such elector to exhibit the original registered letter receipt issued to him when he mailed his transfer certificate to the registrar, and the number on the check list opposite the name of such elector must correspond with the number on the registered letter receipt.

Historical: Laws 1899, 33, Sec. 37;
re-enacting Laws 1890-91, 57, Sec. 46;
amended Laws 1895, 91, Sec. 2.

Mandate to Compel Registration.

Sec. 400. Should any registrar at any time refuse to register any applicant, such applicant may apply to the District Court, or the Judge thereof, for a writ of mandate to compel the registrar to register him, and the provisions of the Code of Civil Procedure in similar proceedings are applicable.

Historical: Laws 1899, 33, Sec. 38;
re-enacting Laws 1890-91, 57, Sec. 47.

Cross Reference: Mandate: Secs.
4976-4989.

Compensation of Registrar.

Sec. 401. The several registrars shall receive such compensation as shall be allowed by the board of county commissioners, which in no case shall exceed twenty-five cents for each name registered, and the compensation herein provided for shall be paid out of the current expense fund.

Historical: Laws 1890-91, 57, Sec. 48;
re-enacted Laws 1899, 33, Sec. 39;
amended Laws 1903, 354, Sec. 1.
Omitting the provision for names carried from the old to the new election

register, which is obsolete because now all voters must register anew for each election. See Laws 1905, 380 (Sec. 396 ante).

CHAPTER 9.

BALLOTS AND SUPPLIES.

Section

- 402. Official election stamp.
- 403. Ballot boxes.
- 404. Official ballots to be provided.
- 405. Form and contents of ballots.
- 406. Submission of special questions.
- 407. Same: Errors and omissions.
- 408. Only official ballots counted.

Section

- 409. Folding of ballots.
- 410. Distribution of ballots.
- 411. Record of number of ballots.
- 412. Delivery of and receipt for supplies.
- 413. Instruction cards and sample ballots.

Official Election Stamp.

Sec. 402. The board of county commissioners shall, at their regular meeting in July next preceding a regular election, make provision for an official election stamp (which must bear the date and year of the election at which it is used, and the words "official ballot"), of such character or device, and of such material, as said board may select, and such official stamp must be changed at each general election and kept secret by the officers furnishing and using it, as provided by law, and no one else must know of its form or make until used according to law. It is also the duty of the county commissioners, at their regular session in July next preceding a general election, to authorize the county auditor to provide a suitable number of election tickets for the county, said tickets to be printed under the same regulations as other county printing. The tickets must be bound in book form, each book containing one hundred tickets and printed in the manner prescribed by law.

Historical: Laws 1899, 33, Sec. 44;
re-enacting Laws 1890-91, 57, Sec. 53.

Ballot Boxes.

Sec. 403. The county commissioners must provide, at the expense of the county, suitable ballot boxes, with lock and key, and an opening in the lid sufficient to admit a single folded ballot, and no larger, and similar boxes for the use of the distributing clerks, in which they shall deposit defaced, mutilated and returned ballots. The keys must be delivered to one of the judges designated by the board.

Historical: Laws 1899, 33, Sec. 45;
re-enacting Laws 1890-91, 57, Sec. 54.

Official Ballots to Be Provided.

Sec. 404. Except as in this title otherwise provided, it shall be the duty of the county auditor of each county to provide printed ballots for every election for public officers in which electors, or any of the electors, within the county, participate, and cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county auditor in the manner provided for in this title. Ballots, other than those printed by the respective county auditors, according to the provisions of this title, shall not be cast or counted in any election. Nothing in this title contained shall prevent any voter from writing on his ticket the name of any person for whom he desires to vote for an office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter. The voter may place a cross (X) opposite the name he has written, but his having written the name of his choice is sufficient evidence that such is the person for whom he desires to vote. Elections for school district officers are excepted from the provisions of this section. In all municipal elections the duties specified in this section as devolving on the county auditor shall devolve on the municipal clerk.

Historical: Laws 1899, 33, Secs. 46, 47, re-enacting Laws 1890-91, 57, Secs. 55, 56.

Cross Reference: Secret ballot guaranteed: Const. Art. 6, Sec. 1.

Duties of Auditor: A county auditor in preparing official ballots acts ministerially only, and must place up-

on the ballot in the proper column the names of the candidates whose nominations have been duly certified to him; he cannot reject the name of any nominee on the ground that he is ineligible to the office for which he is nominated. *Miller v. Davenport* (1902) 8 Ida. 593; 70 Pac. 610.

Form and Contents of Ballots.

Sec. 405. All election ballots prepared under the provisions of this title for the election of candidates for office shall be white in color, and of good quality of printing paper, and the name shall be printed thereon in black ink.

Every ballot shall contain thereon the names of every candidate whose nomination for any office specified in the ballot has been certified or filed according to the provisions of this title, but no name shall appear thereon more than once.

The ballot shall be of sufficient size to contain the names of all the candidates and questions to be voted on, exclusive of the stub or counterfoil. The width of the stub or counterfoil shall be two inches, and of the same length as the ballot. Each stub shall be consecutively numbered, beginning with number one; the ballot and stub being connected by a perforated line.

The width of the ballot must be divided into equal perpendicular spaces, one for each political party represented by the different opposing candidates, in which the tickets of the different parties must be printed, and one similar in which only the names of the different offices to be filled at the election shall be printed, and below which the voter may write the names of the persons he wishes to vote for. These perpendicular spaces, or party tickets, must each be surrounded by very heavy leaded lines, and between each space, or party ticket, there must be a blank space of at least one inch. At the top of each of said spaces, or party tickets, must be left a space wherein must be printed any emblem which the several political parties may, through their several state conventions, respectively select, and at the same time that the officers of such convention certify to the Secretary of State the names of the persons nominated by such conventions, they shall also certify to him such emblem, which the Secretary of State must certify to the several county auditors, when he certifies to them the names of the candidates for the State offices: *Provided, however,* That no political party may use the national flag as its emblem, nor the emblem already adopted by any other political party. Immediately below the emblem or the space therefor, the caption or name of the political party must be printed on one straight line and in a size of type not smaller than long primer. Immediately below the middle of such caption or name, must be printed a circle at least three-fourths of an inch in diameter, within which the voter may place a cross (X), and thereby he votes, and his vote must be counted for all the candidates named in that perpendicular space, or party ticket, except such as he shall erase by drawing lines through the names of those he does not wish to vote for. Immediately below the circle above named must be drawn a horizontal line, below which must be printed the names of the offices, to be printed in small capitals, and the names of the candidates therefor in not smaller than long primer capitals.

When a President and Vice President of the United States are to be elected, the name of the office and the names of the candidates for electors must be printed in like type as directed for other offices and candidates, immediately below the last named horizontal line. The name of each office and the candidate therefor must be included in one space, but separated from other offices and candidates by horizontal lines. To the right of names of the offices and candidates must be a light ruled perpendicular line, within which, and opposite the name of each candidate, must be printed a circle one-half inch in diameter, within which, if the voter places a cross (X) his vote must be counted for the candidate whose name is thus marked: *Provided,* That if he has placed a cross in the large circle at the head of the ticket, his cross opposite the name of the candidate in any other ticket must not be counted unless he has erased the name of any opposing candidate in the ticket in which he placed his cross (X) in the large circle. The voter may, instead of placing a cross in the large circle, vote only for such candidates as he desires, by placing a cross on the right of their names in the small circle, or by writing in the blank ticket the names of the persons he desires to vote for, and placing a cross on the right of their names in the circle. Circles

one-half inch in diameter must be placed in the blank perpendicular

You can vote a ticket “straight” by placing an X in large circle below name of straight ticket you do not wish to vote for, and placing an X in small circle on r

(Emblem.)
REPUBLICAN TICKET



FOR CONGRESS
JOHN JONES



FOR GOVERNOR
WILLIAM JOHNS



FOR SECRETARY OF STATE
HENRY BOND



FOR REPRESENTATIVES
JOHN DOE



GEORGE HOOD



~~WILLIAM WIRT~~
~~WILLIAM WIRT~~



JOHN OSBORNE

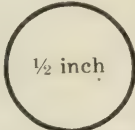


ONE INCH SPACE

(Emblem.)
DEMOCRATIC TICKET



FOR CONGRESS
ALEXANDER KNIGHT



FOR GOVERNOR
CONRAD DWIGHT



FOR SECRETARY OF STATE
RICHARD ROE



FOR REPRESENTATIVES
GEORGE FOX



ANDREW WILSON



JOHN ALSTON



ASA DALE








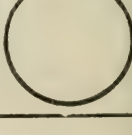


ONE INCH SPACE

the space to the right of each question. The ballot shall be of sufficient



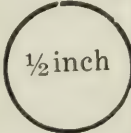
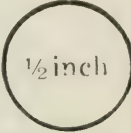












The width of the ballot must be divided into equal perpendicular spaces, one for each political party represented by the different opposing candidates, in which the names of the candidates may be printed, and one similar in width to the others, in which the names of the offices to be filled at the election may be printed. The voter may write the names of the candidates in the spaces provided for the purpose. These perpendicular spaces, or columns, shall be separated by very heavy leaded lines, and there must be a blank space of one inch between each of said spaces, or party tickets. No emblem which shall be printed any emblem which shall be printed through their several state constitutions at the same time that the officer or officers of the Secretary of State the names of the candidates at the conventions, they shall also certify to the names of the candidates. Secretary of State must certify to the names of the candidates. *Provided, however,* That no political party shall use as its emblem, nor the emblem of any political party. Immediately below the election or name of the political party, and in a size of type not smaller than the middle of such caption, the name of each candidate, at least three-fourths of an inch in height, shall be printed. The voter may place a cross (X), and the ballot shall be counted for all the candidates of the political party ticket, except such as he has marked with a cross. The names of those he does not vote for shall be marked with a circle above named must be printed the names of the candidates in small capitals, and the names of the candidates in long primer capitals.

When a President and Vice President are to be elected, the name of the candidate for electors must be printed in the space provided for the purpose, and candidates, immediately below the name of each office and the name of each candidate, in one space, but separated from the others by horizontal lines. To the right of the name of each candidate, there must be a light ruled perpendicular line, within which, if the name of each candidate, must be counted for the candidate. *Provided,* That if he has placed a cross on the right of the ticket, his cross opposite to the name of any other ticket must not be counted for any opposing candidate in the ticket. The voter may place a cross on the right of their names in the blank ticket the names of the candidates and placing a cross on the right of their names in the circle. Circles

(Emblem.) DEMOCRATIC TICKET	
	
FOR CONGRESS ALEXANDER KNIGHT	
FOR GOVERNOR CONRAD DWIGHT	
FOR SECRETARY OF STATE RICHARD ROE	
FOR REPRESENTATIVES GEORGE FOX	
ANDREW WILSON	
JOHN ALSTON	
ASA DALE	

one-half inch in diameter must be placed in the blank perpendicular space on the ballot for the name of each candidate who may be

party you wish to vote for. You can “scratch” your ticket by erasing name on
ht of name you wish to vote for. See illustration on Representatives ticket.

(Emblem.) POPULIST TICKET			
			
FOR CONGRESS	 1/2 inch	ONE INCH SPACE	FOR CONGRESS  1/2 inch
FOR GOVERNOR			FOR GOVERNOR 
FOR SECRETARY OF STATE			FOR SECRETARY OF STATE 
FOR REPRESENTATIVES	   		FOR REPRESENTATIVES    

the space to the right of each question. The ballot shall be of sufficient

The width of the ballot must be divided into equal perpendicular spaces, one for each political party represented by the different an

one-half inch in diameter must be placed in the blank perpendicular space on the ballot, for the name of each candidate who may be therein voted for. All the names of the several like offices and the several opposing candidates therefor must be placed on the same horizontal straight line. On the ballot, in aid of the voter, may be placed such words or explanations as "Vote for one," "Vote for three," "Yes," "No," and the like. The same margin must be left above and below the printed matter. The face of the ballot and the stub thereof must be in substantially the following form:

(See accompanying form.)

At the general elections held in this State nothing shall be placed on the main ballots excepting the names of the different tickets, the emblems, if any, of the different parties, the names of candidates for the different offices on the several party tickets, and the circles as herein provided for.

When a constitutional amendment is to be submitted to a vote of the people the question shall be printed on a separate ballot on pink colored paper, and this colored paper shall not be used in printing ballots referring to any other questions than those of constitutional amendment: *Provided*, That if more than one constitutional amendment is to be voted on at any election they shall all be printed on one ballot.

All other questions to be submitted to the votes of the people, excepting constitutional amendments and county seat or boundary questions shall be printed on separate ballots, on light blue colored paper: *Provided*, That if more than one question is to be submitted at any election they shall all be printed on one ballot.

The county auditors of each county in the State shall cause such separate ballots to be printed and furnished for each precinct in their respective counties at all general elections, the ballots to be prepared as follows:

The ballots shall be seven inches wide and shall be attached to a stub or counterfoil two inches wide by a perforated line. At the top of the pink colored ballots shall be the words "Constitutional Amendment" or "Constitutional Amendments," as the case may be, and at the top of the blue colored ballots shall be the words "Other Question" or "Other Questions," as the case may be. Below these words, and one-half inch from the upper margin, on each ballot, a line shall be printed reaching the full width thereof. From a point one inch from the right end of this line, a perpendicular line shall be printed reaching to the lower margin of the ballot. In the space to the left of this perpendicular line shall be printed the question to be submitted to the vote of the people as now required by law. In the space to the right of this perpendicular line two circles each one-half inch in diameter shall be printed, one above the other with the word "Yes" to the left of the upper circle, and the word "No" to the left of the lower circle. The voter may place a cross (X) within one of these circles and thereby he votes. Should two or more questions be submitted to a vote on the same ballot, they shall be separated from each other by a printed line running the full width of the ballot, and two circles as provided above shall be printed in the space to the right of each question. The ballot shall be of sufficient

length to contain all questions submitted, printed in long primer type. The stubs or counterfoil shall contain the name of the county, the date of the election, and shall be numbered consecutively from one upwards for each separate precinct in the county.

Historical: Laws 1890-91, 57, Sec. 57; re-enacted Laws 1899, 33, Sec. 48; amended Laws 1903, 354, Sec. 1; amended Laws 1905, 311, Sec. 1. The words "and county seat or boundary questions" in the third paragraph from the end are inserted for the reasons stated in the note to Sec. 479, which see.

Cited: (Concur. op.) Green v. State Board Canvassers (1896) 5 Ida. 130; 47 Pac. 259.

Party Tickets: Only one ticket under the recognized name or designa-

tion of a political party is entitled to be placed upon the official ballot. Williams v. Lewis (1898) 6 Ida. 184; 54 Pac. 619.

Same—Determination of Conflict: Where contention arises between two conventions of the same party as to which is entitled to have the ticket nominated by it placed upon the official ballot under the recognized party name, the question will be decided in favor of the ticket nominated by the convention called by the regular State Central Committee of the party. Ib.

Same: Submission of Special Questions.

Sec. 406. Whenever the Secretary of State has duly certified to the county auditor any question to be submitted to a vote of the people, the county auditor shall have a separate ballot printed therefor in the form prescribed by the preceding section for such question. The county auditor shall also prepare the necessary tickets whenever any question is required by law to be submitted to the vote of the electors of any locality, and not to the State generally: *Provided, however,* That in all questions submitted to the voters of a municipal corporation alone, it shall be the duty of the municipal clerk to provide the necessary tickets.

Historical: Laws 1899, 33, Sec. 49; re-enacting Laws 1890-91, 57, Sec. 58. The clause "a separate ballot printed therefor in the form prescribed by the preceding section for such question", is inserted in place of "printed on the regular tickets the question in such form as will enable the electors

to vote upon the question so presented in the manner as in this act provided", to conform to the requirement of separate ballots prescribed by the preceding section as amended in 1905. In the 1899 law special questions were required to be printed on the regular ballots.

Same: Errors and Omissions.

Sec. 407. Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or descriptions of the candidates nominated for office, or in the printing of the tickets, the probate court of the county may, upon application of any elector, by order, require the county auditor or municipal clerk to correct such error, or to show cause why such error should not be corrected.

Historical: Laws 1899, 33, Sec. 50; re-enacting Laws 1890-91, 57, Sec. 59.

Defective Ballots — Correction: Where a candidate for a county office neglects to have a defect in the official ballot corrected as provided for in this section, he cannot after

the election is had and he finds himself defeated, raise the objection that the name of the successful candidate was improperly placed on the official ballot. Baker v. Scott (1895) 4 Ida. 596; 43 Pac. 76.

Only Official Ballots Counted.

Sec. 408. No ballot must be used or counted at any election except the legal ballot printed by the county auditor, or, in the case of municipal elections, by the clerk of the municipality, and distributed accord-

ing to law by the distributing clerk within the polling place. And no ticket must be distributed by the distributing clerk, or permitted to be used by the election officers, which has any mark or thing on the back or outside thereof whereby it might be distinguished from any other ballot legally used on the same day. No ballot or ticket printed in imitation of the legal ticket furnished by the county auditor, or, in the case of municipal elections, by the clerk of the municipality, according to law, shall be circulated on the day of election, or brought into the polling place, and no elector shall be permitted to vote any other ballot than the one he received from the distributing clerk.

Historical: Laws 1899, 33, Sec. 51;
re-enacting Laws 1890-91, 57, Sec. 60.

Folding of Ballots.

Sec. 409. Every ticket, when used as a ballot, must be folded so as to conceal its contents and to expose the impression of the official election stamp on the back.

Historical: Laws 1899, 33, Sec. 52;
re-enacting Laws 1890-91, 57, Sec. 61.

Distribution of Ballots.

Sec. 410. It shall be the duty of the county auditor of the county (or the municipal clerk in the case of municipal elections) to furnish and cause to be delivered to the judges of election of each election precinct within the county (or within the municipality in case of municipal elections), and in which the election is to be held, at the polling place of the precinct before the opening of the polls, the proper number of tickets as required by this title: *Provided*, That not less than one hundred tickets shall be furnished for each fifty or fraction of fifty electors registered in each precinct in the county (and in the case of municipal elections, each precinct in the municipality).

Historical: Laws 1899, 33, Sec. 53;
re-enacting Laws 1890-91, 57, Sec. 62.

Record of Number of Ballots.

Sec. 411. The county auditor of each county shall keep a record of the number of tickets printed and furnished to each polling place and preserve the same for one year.

Historical: Laws 1899, 33, Sec. 54;
re-enacting Laws 1890-91, 57, Sec. 63.

Delivery of and Receipt for Supplies.

Sec. 412. The required number of tickets, together with the official stamp and ink pad for the purpose of stamping or designating the official tickets, as hereinbefore provided, shall be delivered to the judges of election in sealed packages, with marks on the outside clearly designating the polling place for which they are intended, upon receipt of which at least a majority of the judges of election must return receipts therefor to the county auditor in case of county elections, and to the clerk of the municipality in case of municipal elections, and the several auditors and clerks shall preserve the receipts for one year.

Historical: Laws 1899, 33, Sec. 55;
re-enacting Laws 1890-91, 57, Sec. 64.

Instruction Cards and Sample Ballots.

Sec. 413. The county auditor of each county in case of a general election, and the several city clerks in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining tickets, as to the manner of marking them, and as to obtaining new tickets in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of Sections 6370, 6371 and 6372, of the title relating to crimes against the elective franchise, to be printed in large, clear type, on separate cards, to be called cards of instruction. The county auditor of each county, and the several city clerks in case of a municipal election, shall furnish four such cards to the judges of election in each election precinct, and one additional card for each fifty registered electors or fractional part thereof, at the same time and in the same manner as the printed tickets. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of tickets, and not less than three of such cards elsewhere in and about the polling places, upon the day of election. The county auditor of each county, and the several city clerks in case of a municipal election, shall cause to be printed on tinted or colored paper, without official indorsement of any kind, and furnish to the judges of election of each election precinct, at the same time and in the same manner as the official tickets and official stamps, six sample or specimen tickets and one additional sample ticket for each fifty registered electors or fractional part thereof in the precinct. The sample tickets shall be printed like the official or regular tickets, and of the same size without the stub. There shall be posted in each of the compartments or booths, one of the sample tickets without the official stamp, and not less than four such tickets shall be posted elsewhere in and about the polling places on the day of election. It shall be the duty of the same officers, at the same time and in the same manner, to provide and furnish to each polling place proper and necessary supplies and conveniences for marking the tickets.

Historical: Laws 1899, 33, Sec. 56;
re-enacting Laws 1890-91, 57, Sec. 65.

CHAPTER 10.

CONDUCT OF ELECTION.

Section

- 414. Election officers to take oath.
- 415. Opening and closing of polls.
- 416. Changing polling place.
- 417. Same: Proclamation and notice.
- 418. Opening ballot boxes.
- 419. Opening supplies.
- 420. Judges may administer oaths.
- 421. Duties of constable.
- 422. Voting to continue during election.

Section

- 423. Delivery of ticket to elector.
- 424. Manner of voting.
- 425. Spoiled ballots.
- 426. Deposit of ballot in box.
- 426a. Same: Unstamped ballots.
- 427. Officers not to divulge information.
- 428. Challenging voters.
- 429. Challenge for want of citizenship.
- 430. Same: For conviction of felony.

Section

431. Same: For want of residence:
For non-age.
432. Same: Residence: How deter-
mined.
433. Oath of challenged person.
434. Duty of clerks.

Section

435. Judge's duty to challenge.
436. Refusal to take oath.
437. Disposal of stubs and defaced
tickets .
438. Form of poll lists.

Election Officers to Take Oath.

Sec. 414. Before opening the polls, all officers of election must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath.

Historical: Laws 1899, 33, Sec. 58;
re-enacting Laws 1890-91, 57, Sec. 67.

Opening and Closing of Polls.

Sec. 415. At all elections to be held under this title, the polls must be opened at the hour of eight o'clock in the forenoon, if the regularly appointed judges of election and distributing clerk are present; but in case they are not present, then the polls must not be opened by the judges or distributing clerk elected until the hour of nine o'clock, unless a majority of the regular appointed judges are present, and the polls must continue open until seven o'clock in the evening of the same day, at which time the polls must be closed; and upon opening the polls, one of the clerks, under the direction of the judges, must make proclamation of the same; and thirty minutes before closing the polls, proclamation must be made in like manner, and the polls closed in half an hour thereafter.

Historical: Laws 1899, 33, Sec. 59;
re-enacting Laws 1890-91, 57, Sec. 68.

Changing Polling Place.

Sec. 416. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election.

Historical: Laws 1899, 33, Sec. 60;
re-enacting Laws 1890-91, 57, Sec. 69.

Same: Proclamation and Notice.

Sec. 417. Upon adjourning any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made from, notifying electors of the change of polling place.

Historical: Laws 1899, 33, Sec. 61;
re-enacting Laws 1890-91, 57, Sec. 70.

Opening Ballot Boxes.

Sec. 418. Before receiving any ballots the judge must, in the presence of any persons assembled at the polling place, open and exhibit, close and lock, the ballot boxes, and thereafter they must not be

removed from the polling place until all the ballots are counted, nor must they be opened until after the polls are finally closed, and then in the presence of the bystanders: *Provided*, That in precincts having two sets of election officers and duplicate ballot boxes, as provided for in Sections 443 to 447, inclusive, of this title, said ballot boxes may be opened during the election for the purpose of counting the ballots as in said sections provided.

Historical: Laws 1899, 33, Sec. 64; | Proviso added to conform to Laws
re-enacting Laws 1890-91, 57, Sec. 73. | 1899, 372, (Secs. 443-447 post).

Opening Supplies.

Sec. 419. The judges of election, on the opening of the polls, must break the sealed packages of election tickets, official stamp and other supplies, in the presence of bystanders.

Historical: Laws 1899, 33, Sec. 65;
re-enacting Laws 1890-91, 57, Sec. 74.

Judges May Administer Oaths.

Sec. 420. Either judge may administer and certify any oath required to be administered during the progress of an election, and either judge may challenge a voter of whose qualifications to vote he is in doubt, but in such case one of the remaining judges must administer the oath.

Historical: Laws 1899, 33, Sec. 66; | Phraseology transposed so as to ren-
re-enacting Laws 1890-91, 57, Sec. 75. | der the section grammatical.

Duties of Constable.

Sec. 421. The constable of the precinct shall be in attendance at the polling place on the day of election, and, where there is no constable, the judges of election may appoint some capable person to act as such during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for such officers, and he shall allow no one within the guard rail of the polling place except those who go to vote, and shall allow but one elector in a compartment at one time.

Historical: Laws 1899, 33, Sec. 76;
re-enacting Laws 1890-91, 57, Sec. 85.

Voting to Continue During Election.

Sec. 422. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open.

Historical: Laws 1899, 33, Sec. 72;
re-enacting Laws 1890-91, 57, Sec. 81.

Delivery of Ticket to Elector.

Sec. 423. An elector desiring to vote shall give his name and, if requested to do so, his residence, to one of the clerks of election, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found on the check list by the election officer having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the guard rail as hereinbefore provided. The distributing

clerk shall give him one, and only one, ticket, and his name shall be immediately checked on said list by placing a mark on the registry list to denote that he has received a ticket, and the ticket must be stamped on the back and near the top of the ticket with the official stamp by the distributing clerk, and thereupon delivered to the elector. Besides the election officers, not more than one voter, in excess of the voting shelves or compartments provided, shall be allowed in said enclosed space at one time.

Historical: Laws 1899, 33, Sec. 68;
re-enacting Laws 1890-91, 57, Sec. 77.

Manner of Voting.

Sec. 424. On receipt of his ticket, the voter shall forthwith and without leaving the enclosed space, retire alone to one of the voting shelves or compartments so provided, and shall prepare his ticket by marking in the appropriate margin, or place a cross (X) opposite the name of the candidate of his choice for each office to be filled, or in the circle provided therefor at the head of the several party tickets, or by filling in or writing the name of the person for whom he wishes to vote in the blank space provided therefor in the column or division of the ticket for that purpose provided, and marking a cross (X) opposite thereto; and in case of a question submitted to a vote of the people, by marking in the appropriate margin or place a cross (X) against the answer which he desires to give. Before leaving the voting shelf or compartment the voter shall fold his ticket without displaying the marks thereon, and so as to expose the impression of the official stamp on the back, and he shall keep the same so folded until he has voted. He shall then hand his ballot to one of the judges and announce his name. He shall mark his ticket or ballot without delay and shall quit said enclosed space as soon as he has voted.

No such voter shall be allowed to occupy a voting shelf or compartment already occupied by another, nor to remain within said enclosed space more than ten minutes, nor to occupy a voting shelf or compartment more than five minutes in case all of such shelves or compartments are in use and other voters are waiting to occupy the same. No voter, not an election officer, whose name has been checked on the list of the election officers, shall be allowed to re-enter said enclosed space during said election. It shall be the duty of the judges for the time being to secure the observance of the provisions of this section: *Provided*, That if any registered elector, who is blind or otherwise disqualified by reason of physical infirmities rendering such voter incapable of personally marking his ballot, desires to vote, then and in that case, any two of the judges not of the same political party may, at the request of such elector, mark and prepare his ballot for him, placing an (X) mark in the proper place and opposite the names of the candidates for whom such elector desires to vote. When the ballot so marked by the judges is properly prepared and folded it shall be given to the elector, who shall deliver it to the proper judge to be deposited in the ballot box, as in other cases. The judges assisting any such physically incapacitated elector in the preparation of his ballot, must not influence or attempt to influence such voter

in the selection of candidates to be voted for, and any judge who has assisted any such elector, who shall divulge to any person the name of any candidate for whom such elector voted, shall be guilty of a misdemeanor.

Historical: Laws 1899, 33, Sec. 69; re-enacting Laws 1890-91, 57, Sec. 78; amended Laws 1895, 91, Sec. 4. The clause "or in the circle provided therefor at the head of the several party tickets" is added to con-

form to Laws 1905, 311, Sec. 1 (Sec. 405 ante).

Cross Reference: As to manner of voting, see also Sec. 405.

Spoiled Ballots.

Sec. 425. No person shall take or remove any ticket from the polling place before the close of the polls. If an elector inadvertently or by mistake spoils a ticket, he shall return it folded to the distributing clerk, who must, if satisfied of such inadvertence, give him another ticket. The ticket thus returned shall, without examination, be immediately canceled by writing across the back, or outside of the ticket as folded, the words "Spoiled ticket, another issued," and deposit the defaced ticket in a box provided for that purpose. And no one shall be allowed within the guard rails of the polling place, except the election officers duly appointed, together with the number of voters, as provided in this chapter.

Historical: Laws 1899, 33, Sec. 70; re-enacting Laws 1890-91, 57, Sec. 79.

Cross Reference: Number of voters allowed inside the rails: Sec. 423.

Deposit of Ballots in Box.

Sec. 426. The judge to whom any ballot may be delivered shall, upon the receipt thereof, pronounce in an audible voice the name of the elector, and if no objection shall be made to him, and the judges are satisfied that he is a legal voter, and is duly registered, and the official stamp is plainly visible on the outside of the folded ballot, he shall, without opening or examining, immediately deposit the ballot in the ballot box, and the clerks of the election shall enter the name of the elector in the poll books.

Historical: Laws 1899, 33, Sec. 73; re-enacting Laws 1890-91, 57, Sec. 82.

Same: Unstamped Ballots.

Sec. 426a. No judge of election shall deposit in any ballot box any ballot upon which the official stamp, as hereinbefore provided for, does not appear. Every person violating the provisions of this section shall be guilty of a misdemeanor.

Historical: Laws 1899, 33, Sec. 74; re-enacting Laws 1890-91, 57, Sec. 83.

Officers Not to Divulge Information.

Sec. 427. No officer, judge or clerk shall communicate, except for some purpose authorized by law, before the polls are closed, any information as to the name or number on the registry list of any elector who has not applied for a ticket, or who has not voted at the polling place; and no officer, judge or clerk, or other person whom-

soever, shall interfere with, or attempt to interfere with, a voter when marking his ticket. No officer, judge or clerk, or other person, shall, directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted.

Historical: Laws 1899, 33, Sec. 75;
re-enacting Laws 1890-91, 57, Sec. 84.

Challenging Voters.

Sec. 428. In case any person offering to vote is challenged, one of the judges must declare the qualifications of an elector to such person; if the person so challenged then declare himself duly qualified, and the challenge is not withdrawn, one of the judges must then tender him the elector's oath, as provided for in Section 396.

Historical: Laws 1899, 33, Sec. 77;
re-enacting Laws 1890-91; 57, Sec. 86.
"Section 396" for "Section 43." The
reference in the 1899 law was inaccu-

rate as it was to Sec. 43, whereas it
should have been to Sec. 34 which re-
enacted Sec. 43 of the 1891 act.

Same: Challenge for Want of Citizenship.

Sec. 429. If the person be challenged as unqualified, on the ground that he is not a citizen, and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions:

1. Are you a citizen of the United States?
2. Are you a native or naturalized citizen?
3. Have you become a citizen of the United States by reason of the naturalization of your parents or one of them?
4. Where were your parents, or one of them, naturalized?

If the person offering to vote claims to be a naturalized citizen of the United States, he shall state, under oath, when and in what court he was naturalized.

Historical: Laws 1889, 33, Sec. 78;
re-enacting Laws 1890-91, 57, Sec. 87.

Same: For Conviction of Felony.

Sec. 430. If the challenge is on the ground that the person challenged has been convicted of felony and has not been pardoned, he must not be questioned; but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses and the non-production of a pardon.

Historical: Laws 1899, 33, Sec. 78;
re-enacting Laws 1890-91, 57, Sec. 88.

Same: For Want of Residence: For Non-Age.

Sec. 431. If the person be challenged as unqualified on the ground that he has not resided in this State for six months immediately preceding the election, the judges, or one of them, shall put the following questions:

1. Have you resided in this State for six months immediately preceding this election, and during that time have you retained a home or domicile elsewhere?

2. Have you been absent from this State within the six months immediately preceding this election?

3. If so, when you left, was it for a temporary purpose, with the design of returning or did you intend remaining away?

4. Did you, while absent, look upon and regard this State as your home?

5. Did you, while absent, vote in any State or Territory?

If the person be challenged on the ground that he has not resided in the county thirty days, one of the judges shall question him as to his residence in the county, precinct or ward in a manner similar to the before-mentioned method of questioning a person as to his residence in this State.

If the person be challenged as unqualified on the ground that he is not twenty-one years of age, the judges, or one of them, shall put the following question: Are you twenty-one years of age, to the best of your knowledge and belief. The judges of election, or one of them, shall put all such other questions to the person challenged under the respective heads aforesaid, as may be necessary to test his qualifications as an elector at that election.

Historical: Laws 1899, 33, Sec. 81;
re-enacting Laws 1890-91, 57, Sec. 90.

Same: Residence: How Determined.

Sec. 432. The judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

1. That place shall be held and considered to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State, Territory or county of this State, for temporary purpose merely, with an intention of returning.

3. If a person remove to any other State or to any of the Territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this State.

4. If a person remove from one county in this State to any other county in the State with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county from which he removed.

Historical: Laws 1899, 33, Sec. 80;
re-enacting Laws 1890-91, 57, Sec. 89;
amended Laws 1895, 91, Sec. 6.

Oath of Challenged Person.

Sec. 433. If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States, of the age of twenty-one years; that you have been a resident of this State for six months next immediately preceding this election,

and have not retained a home or domicile elsewhere; that you have been for the last thirty days, and now are, a resident of this county, and that you have not voted at this election."

Historical: Laws 1899, 33, Sec. 82;
re-enacting Laws 1890-91, 57, Sec. 91;
amended Laws 1895, 91, Sec. 5.

Duty of Clerks.

Sec. 434. Whenever any person's vote shall be received after having taken the oath or affirmation prescribed in the preceding section, it shall be the duty of the clerks of the election to write on the poll books, at the end of the person's name, "Sworn."

Historical: Laws 1899, 33, Sec. 84;
re-enacting Laws 1890-91, 57, Sec. 93.

Judge's Duty to Challenge.

Sec. 435. It shall be the duty of any judge of election to challenge any person offering to vote whom he believes not to be qualified as an elector.

Historical: Laws 1899, 33, Sec. 85;
re-enacting Laws 1890-91, 57, Sec. 94.

Refusal to Take Oath.

Sec. 436. If any person challenged refuses to take the oath or affirmation tendered, or refuses to be sworn and to answer the questions touching the matter of naturalization, he must not be allowed to vote: *Provided*, That after such oath shall have been taken, the judges may nevertheless refuse to permit such person to vote if they shall be satisfied that he is not a legal voter.

Historical: Laws 1899, 33, Secs. 83,
86, re-enacting Laws 1890-91, 57, Secs.
92, 95; re-written in combination.

Disposal of Stubs and Defaced Tickets.

Sec. 437. As soon as the polls are finally closed the distributing clerk must deliver to the judges of election the book or books of tickets from which tickets have been taken during the election, and the box containing the defaced, mutilated or returned ballots.

Historical: Laws 1899, 33, Sec. 87;
re-enacting Laws 1890-91, 57, Sec. 96.

Form of Poll Lists.

Sec. 438. The following is the form of poll lists to be kept by the judges and clerks of election.

Poll Lists.

Of the election held in the precinct of _____, in the County of _____, on the _____ day of _____, in the year A. D. one thousand nine hundred and _____ A. B., C. D. and E. F., judges, and G. H., I. J., and K. L., clerks, of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

Number and Names of Electors Voting.

No.	Name	No.	Name
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the number of electors voting at this election amounts to

Attest:

G. H.,)
I. J.,) Clerks.
K. L.,)

A. B.,)
C. D.,) Judges of Election.
E. F.,)

Historical: Laws 1899, 33, Sec. 71;
re-enacting Laws 1890-91, 57, Sec. 80.

CHAPTER 11.
CANVASS OF RETURNS.

Article	Article
1. Canvass by judges.	4. Errors and mistakes in ballots and returns.
2. Canvass by county commissioners.	
3. State Board of Canvassers.	

ARTICLE 1.
CANVASS BY JUDGES.

Section	Section
439. Canvass of votes.	443. Appointment of two sets of officers.
440. Comparison of poll lists, ballots and stubs: Void ballots.	444. Duplicate ballot boxes.
441. Count: Certificate by judges and clerks.	445. Counting of ballots: Witnesses: Concealment of results.
442. Transmission of supplies to county commissioners: Custody.	446. Judges to join in making return.
	447. Application of sections.

Canvass of Votes.

Sec. 439. When the polls are finally closed the judges of election must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof declared.

Historical: Laws 1899, 33, Sec. 88;
re-enacting Laws 1890-91, 57, Sec. 97.
The opening clause "when the polls

are finally closed" is inserted to bridge the hiatus caused by the division of the act into chapters.

Comparison of Poll Lists, Ballots and Stubs: Void Ballots.

Sec. 440. The canvass must commence by comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The box must then be opened, and the ballots found therein counted by the judges, unopened, and the number of ballots in the box must agree with the

number marked on the poll list or registry list as having received a ticket, and this number, together with the number of defaced, mutilated and returned ballots, must agree with the number of stubs or counterfoils in the books from which the tickets have been taken.

Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted: *Provided*. That when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Historical: Laws 1899, 33, Sec. 89;
re-enacting Laws 1890-91, 57, Sec. 98.

Count: Certificate by Judges and Clerks.

Sec. 441. The ballots and poll lists agreeing, the board must then proceed to count and ascertain the number of votes cast, and the clerks must set down in their poll books the name of every person voted for, and then at full length the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made, as nearly as circumstances will permit, in the following form, to wit:

At an election held at the house of (A. B.) in the town (district or precinct) of _____, in the County of _____, and in the State of Idaho, on the _____ day of _____, A. D. _____, the following named persons received the number of votes annexed to their respective names for the following described offices, to wit: (A. B.) has _____ votes for member of Congress; (I. J.) has _____ votes for member of State Senate; (K. L.) has _____ votes for member of House of Representatives, (and in like manner for any other person voted for). Certified by us,

Attest:

S. T.,)

U. V.,) Clerks of Election.

W. Y.,)

M. N.,)

O. P.,) Judges of Election.

Q. R.,)

Historical: Laws 1899, 33, Sec. 90;
re-enacting Laws 1890-91, 57, Sec. 99.

Transmission of Supplies to County Commissioners: Custody.

Sec. 432. After the canvass of the votes the judges of election must enclose and seal one of the poll books; the register of the qualified electors, also all stubs and unused ticket books, and defaced or mutilated ballots, and the election stamp, under cover, directed to the clerk of the board of county commissioners of the county in which such election was held. The packages thus sealed must be delivered direct to the said clerk personally, or transmitted by special messenger without expense to the county, or deposited in the nearest post-office, by one of the judges to be chosen by lot, and the postage thereon and the fees for registering the same must be fully prepaid, and said package must be duly registered and receipt therefor taken. The other poll book, together with the ballots, must be, by said judges, placed in the ballot box, and by them sealed up and then deposited with one of said judges, to be decided by lot if they cannot otherwise agree; and the said poll book and ballots must be kept with the seal unbroken for at least eight months, unless the same is required as evidence in

a court of law in any case arising under the election laws of this State, and then only when the judge having said ballot box in charge is served with a subpoena requiring him to produce the same in court as evidence in any such beforementioned case, when the same may be opened under the direction of the court.

Historical: Laws 1890-91, 57, Sec. 100; re-enacting Laws 1899, 33, Sec. 91; amended Laws 1901, 291, Sec. 1.

Omitting the proviso, which applied only to the election of 1900.

Appointment of Two Sets of Officers.

Sec. 443. In every precinct where, at the general election then next preceding, there were more than one hundred votes cast for the office of Governor, the board of county commissioners of the county wherein the same is situated, shall, at the time provided for the appointment of election officers, appoint two sets of such officers, and in making such appointment shall designate which set shall act under the provisions of this and the following sections of this article. And such board shall also make suitable provision for the carrying of these sections into effect.

Historical: Laws 1899, 372, Sec. 1.

Duplicate Ballot Boxes.

Sec. 444. When, at any election in any precinct to which these sections apply, fifty votes shall have been cast, another ballot box for receiving ballots shall be used, and the first ballot box shall be closed and delivered to such judges designated as provided in the preceding section, who shall proceed to the place provided for them, and shall at once count the votes in said ballot box; and when counted, they shall return said emptied ballot boxes to the judges receiving the ballots and otherwise conducting the election, and the latter shall then deliver to the judges who were designated to count the ballots, the second ballot box, and such judges shall immediately count the ballots therein contained as above provided; and they shall continue so to count the ballots and so to exchange the ballot boxes till the close of the polls, after which time both sets of judges shall, acting separately, count the remaining ballots, dividing the same between them.

Historical: Laws 1899, 372, Sec. 2.

Counting of Ballots: Witnesses: Concealment of Results.

Sec. 445. The board of county commissioners of the several counties must provide two sets of ballot boxes for all precincts where these sections apply, and shall provide a suitable and convenient place or room immediately adjoining the place where the election is being held, for the use of the election officers counting the ballots during the day. Such counting may be witnessed by one representative from each of the political parties represented upon the official ballot, which representative shall be designated in writing by the chairman and secretary of the respective county central committees, or in case of a city election by the city central committee, and who shall each take and subscribe an oath before one of the judges of election that he will not, prior to the closing of the polls, communicate in any

manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; and such representatives and the judges counting the ballots shall be confined to the room or place provided, and shall not leave the same during the count except in case of necessity, and then in the custody of the constable of election; nor shall any such election officers or party representatives in any manner, directly or indirectly, by word or sign, disclose or communicate the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto, until the polls are closed.

Any person who shall intentionally ascertain or attempt to ascertain the progress or state of the count before the close of the polls, and any officer of election or party representative designated as aforesaid, who shall violate any of the provisions of this section, shall be guilty of a felony, and shall be punished by a fine not to exceed one thousand dollars, or imprisonment in the Penitentiary for a period not to exceed one year, or by both such fine and imprisonment.

Historical: Laws 1899, 372, Sec 4;
amended Laws 1901, 16, Sec. 1.

Judges to Join in Making Return.

Sec. 446. All the judges of election shall join in making the return to the board of county commissioners.

Historical: Laws 1899, 372, Sec. 3.

Application of Sections.

Sec. 447. These sections shall only apply to general elections, and, except as herein modified, the general election laws are in every way applicable to the precincts acting under the provisions hereof, and to all the officers of election.

Historical: Laws 1899, 372, Secs.
5, 6.

ARTICLE 2.

CANVASS BY COUNTY COMMISSIONERS.

Section	Section
448. Canvass of returns: Abstracts of votes.	449. Disposition of abstracts of votes.

Canvass of Returns: Abstracts of Votes.

Sec. 448. The board of county commissioners, the auditor acting as clerk, in the several counties, must act as a board of canvassers of elections and must on the tenth day of after any general or special election, or sooner, if all the returns be received, and any two of the commissioners are present, proceed publicly, at their office, to open the returns and canvass the votes of said election, and make up abstracts thereof; and it is their duty to canvass and make up abstracts of all returns that are intelligible on their face and which are sufficiently authenticated to show what returns they are; and if any returns are rejected on account of informality, ambiguity or uncertainty—and none must be rejected for other causes—then it is

the duty of the board to deliver the returns so rejected to the sheriff of the county, who must proceed at once to summon and call together the board of judges of election of the precinct from which said returns were received, and inform them that such return has been rejected; and it is the duty of such board of judges to meet publicly, at the place where the election was held in their precinct, immediately after receiving such notice, and at once proceed to put said return in due form and certify to the same; and for the purpose of so doing they may have the ballot box brought in and opened in their presence and the contents thereof inspected, and when said returns have been duly corrected they must be delivered into the hands of the sheriff, and the board of canvassers may adjourn, to await the correction of said returns for the period of not more than five days at one time, nor more than ten days in all. When said canvass is completed the abstracts must be made up and signed by the board. The abstracts shall be made out in the following manner:

The abstract of votes for electors for President and Vice President of the United States shall be on one sheet, and the abstract of votes for Representative in Congress shall be on another sheet, and the abstract of votes for officers of the executive department shall be on another sheet, and the abstract of votes for Senators shall be on another sheet, and the abstract of votes for Representatives shall be on another sheet, and the abstract of votes for Judges of the Supreme Court shall be on another sheet, and the abstract of votes for Judges of the District Court shall be on another sheet, and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the auditor of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and cause such certificate to be delivered to the person entitled to it. If any two or more persons have an equal number of votes for the same county or precinct office, and a higher number than any other person, the county commissioners shall immediately determine by lot which of the two candidates shall be elected.

Historical: Laws 1899, 33, Sec. 92; re-enacting Laws 1890-91, 57, Sec. 101. Omitting "and district attorney" after "Judges of the District Court," that office having been abolished, and the prosecuting attorney being a county officer.

Duty of Canvassers: The board of commissioners in acting as a board of canvassers, has no authority to de-

clare any person elected to an office but must make out the abstracts of votes for each office separately, and deliver them to the auditor whose duty it is, as auditor and not as clerk of the board, to make out a certificate of election to each of the persons having the highest number of votes. *Cunningham v. George* (1892) 3 Ida. 456; 31 Pac. 809.

Disposition of Abstracts of Votes.

Sec. 449. The auditor of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstracts and deliver or transmit the same in a registered package by mail to the office of the Secretary of State; the original abstracts he shall file and record in a book in his office to be kept for that purpose. He shall also certify to the abstracts and copies, and affix

thereto the county seal, and the said auditor shall indorse on the back of each abstract; "Certified copy of the abstract of votes cast for Governor, etc., members of the Legislature, etc., (as the case may be) cast at the regular election inCounty,, 19....."

Historical: Laws 1899, 33, Sec. 93;
re-enacting Laws 1890-91, 57, Sec.
102.

ARTICLE 3.

STATE BOARD OF CANVASSERS.

Section	Section
450. Constitution of Board.	454. Same: In case of tie vote.
451. Delay in remitting abstracts.	455. Record of statement: Certifi- cates of election.
452. Meeting of Board.	456. List of members of Legislature.
453. Duties of Board: Statement of result.	

Constitution of Board.

Sec. 450. The Governor, Secretary of State, State Auditor, State Treasurer and Attorney General, or any three of them, shall constitute the State Board of Canvassers, and shall canvass the abstracts of votes cast in the different counties of the State for electors of President and Vice President of the United States, for Representative in Congress, for Judges of the Supreme Court and District Courts, and for Senators and Representatives and all State officers.

Historical: Laws 1899, 33, Sec. 94; re-enacting Laws 1890-91, 57, Sec. 103. Omitting "district attorneys" after	"District Courts" as the office is abol- ished and county attorneys are county officers.
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Delay in Remitting Abstracts.

Sec. 451. If from any county no such abstract of votes shall have been received within twenty days next after election by the Secretary of State, he shall dispatch a special messenger to obtain a copy of the same from the county auditor of such county, and such county auditor shall immediately, on demand of such messenger, make out and deliver to him the copy required, which copy of the abstract of votes the messenger shall deliver to the Secretary of State without delay. The said messenger shall receive as compensation for his services three dollars per day and fifteen cents for each mile traveled in going to and returning from the county seat of said county, by the usual route, to be paid by the county.

Historical: Laws 1899, 33, Sec. 95; re-enacting Laws 1890-91, 57, Sec. 104.	
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Meeting of Board.

Sec. 452. For the purpose of canvassing the result of elections, the State Board of Canvassers shall meet at the office of the Secretary of State, at ten o'clock of the forenoon of the twentieth day after any election for any of the officers mentioned in Section 450 (if it be not on Sunday; if it be on Sunday, then they shall meet on the twenty-first day), when they shall, if the returns from all the counties of the State be in the possession of the Secretary of State, proceed to canvass the votes. If the returns are not all in,

they shall adjourn from time to time, as they deem proper, to await the receipt of all the returns: *Provided, however,* That on the second Wednesday of December next after the election, they shall canvass the votes, whether all the returns be received or not.

Historical: Laws 1899, 33, Sec. 96;
re-enacting Laws 1890-91, 57, Sec. 105.

Duties of Board: Statement of Result.

Sec. 453. The State Board of Canvassers, when met in accordance with law and a quorum (three) being present, shall proceed to examine and make statement of the whole number of votes given at any such election for all the officers mentioned in Section 450, that shall have been voted for in said election, which statement will show the names of the persons to whom such votes shall have been given for either of said offices, and the whole number given to each, distinguishing the several districts and counties in which they were given. They shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, or either of them, and shall indorse and subscribe on such statement a certificate of their determination, and deliver it to the Secretary of State.

Historical: Laws 1899, 33, Sec. 97;
re-enacting Laws 1890-91, 57, Sec. 106.

Duty of Canvassers: It is not necessary for the State Board of Canvassers to declare in terms whether, in

their opinion, any amendment to the Constitution has been adopted or not. *Hays v. Hays* (1897) 5 Ida. 154; 47 Pac. 733.

Same: In Case of Tie Vote.

Sec. 454. If any two or more persons have an equal and the highest number of votes for member of either house of the Legislature, for Judge of the Supreme or District Courts, or for any State office, other than those mentioned in Section 1, of Article 4, of the Constitution, the State canvassers shall proceed to determine, by lot, which of the candidates shall be declared elected. Reasonable notice shall be given to each candidate of the time when such election will be so determined.

Historical: Laws 1899, 33, Sec. 98;
re-enacting Laws 1890-91, 57, Sec. 107;
amended Laws 1895, 90, Sec. 1. Omit-

ting the proviso for district attorney as now obsolete.

Record of Statement: Certificates of Election.

Sec. 455. The Secretary of State shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination as made by the State Board of Canvassers, and shall, without delay, make out and transmit to each of the persons thereby declared to be elected a certificate of his election, certified by him under his seal of office.

Historical: Laws 1899, 33, Sec. 99;
re-enacting Laws 1890-91, 57, Sec. 108.

Cross Reference: Certificate of elec-

tion is prima facie evidence of right to membership in Legislature: Sec. 35.

List of Members of Legislature.

Sec. 456. Upon the day fixed by law for the assembling of the Legislature, the Secretary of State shall lay before each house a list of the members elected thereto, with the districts they represent, in accordance with the returns in his office.

Historical: Laws 1899, 33, Sec. 100;
re-enacting Laws 1890-91, 57, Sec. 109.

ARTICLE 4.

ERRORS AND MISTAKES IN BALLOTS AND RETURNS.

Section	Section
457. Misspelled name on ballots.	458. Correction of mistakes.

Misspelled Names on Ballots.

Sec. 457. Whenever the judges of election in any precinct or ward discover in the canvassing of votes that the name of any candidate voted for be misspelled, or the initial letters of his Christian name or names be transposed or omitted in part, or altogether, on the ballot, the vote or votes for such candidate shall be counted for him, if the intention of the elector to vote for him be apparent; and whenever the board of county canvassers, or of State canvassers, shall find that the returns from any precinct, ward, county or district (as the case may be) do not strictly conform to the requirements of law, in the making, certifying and returning of the same, the votes polled in such precinct, ward, county or district shall, nevertheless, be canvassed and counted, if such returns shall be sufficiently explicit to enable such boards, or any person or persons authorized to canvass votes and returns, to determine therefrom how many votes were polled for the several persons who were candidates and voted for at the election of which the votes are being canvassed.

Historical: Laws 1899, 33, Sec. 103;
re-enacting Laws 1890-91, 57, Sec. 116.

Correction of Mistakes.

Sec. 458. If upon proceeding to canvass the votes it shall clearly appear to the canvassers that in any statement produced to them certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical, merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose) to the precinct or ward judges, or to the county board of canvassers (as the case may be) from whom they were received, to have the same corrected; and the judges of election or county auditor (as the case may be), when so demanded, shall make such correction as the facts of the case require, but shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the canvassing board may adjourn from day to day for the purpose of obtaining and receiving such statement: *Provided, always,* That they shall not delay counting past the day provided by law for the completion of the canvass.

Historical: Laws 1899, 33, Sec. 104; re-enacting Laws 1890-91, 57, Sec. 117.	Cross Reference: Day provided for completion of canvass: Sec. 452.
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CHAPTER 12.

PRESIDENTIAL ELECTORS.

Section

459. Certificates of election.
 460. Election for Presidential Electors.
 461. Meeting of Electors.
 462. Same: Notice to Governor: Vacancies.

Section

463. Filling vacancies: Tie vote.
 464. Notification of election to fill vacancy.
 465. Compensation of Electors.

Certificates of Election.

Sec. 459. The Secretary of State shall prepare lists of the names of the Electors of President and Vice President of the United States, elected at any election, procure thereto the signature of the Governor, affix the seal of the State to the same, and deliver one of such certificates thus signed to each of said Electors on or before the second Wednesday in December next after such election.

Historical: Laws 1899, 33, Sec. 101;
 re-enacting Laws 1890-91, 57, Sec. 110.

Election for Presidential Electors.

Sec. 460. There shall be an election held in this State for the election of such Electors, at the times appointed by any law of the Congress or the Constitution of the United States for such election, and when such election shall be special, the same shall be called and held, and the votes polled and canvassed, in all respects as at a general election, and the duties of the Electors so elected shall be the same as prescribed by law for Electors elected at a general election.

Historical: Laws 1899, 33, Sec. 102;
 re-enacting Laws 1890-91, 57, part of
 Sec. 115.

Meeting of Electors.

Sec. 461. The Electors chosen to elect a President and Vice President of the United States shall, at twelve o'clock noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this State, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

Historical: Laws 1899, 66, Sec. 1; | "Noon" inserted to make the section
 re-enacting Laws 1890-91, 57, Sec. 111. | definite.

Same: Notice to Governor: Vacancies.

Sec. 462. Each elector of President and Vice President of the United States shall, before the hour of twelve o'clock noon on the day next preceding the day fixed by the law of Congress to elect a President and Vice President, give notice to the Governor that he is at the seat of government and ready at the proper time to perform the duties of an Elector; and the Governor shall forthwith deliver to the Electors present a certificate of all the names of the Electors; and if any Elector named therein fails to appear before nine o'clock on the morning of the day of election of President and Vice President as aforesaid, the Electors then present shall immediately proceed to

elect, by ballot, in the presence of the Governor, persons to fill such vacancies.

Historical: Laws 1899, 66, Sec. 2;
re-enacting Laws 1890-91, 57, Sec. 112.

“Noon” inserted to make the section
definite

Filling Vacancies: Tie Vote.

Sec. 463. If more than the number of persons required to fill the vacancies, as aforesaid, have the highest and an equal number of votes, then the Governor, in the presence of the Electors attending, shall decide by lot which of said persons shall be elected; otherwise they, to the number required, having the greatest number of votes, shall be considered elected to fill such vacancies.

Historical: Laws 1899, 66, Sec. 3;
re-enacting Laws 1890-91, 57, Sec. 113.

Notification of Election to Fill Vacancy.

Sec. 464. Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the Governor by the Electors making such choice; and the Governor shall cause immediate notice to be given in writing to the Electors chosen to fill such vacancies; and the said persons so chosen shall be Electors, and shall meet the other Electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as Electors aforesaid by the Constitution and laws of the United States and of this State.

Historical: Laws 1899, 66, Sec. 4;
re-enacting Laws 1890-91, 57, Sec. 114.

Compensation of Electors.

Sec. 465. Every Elector of this State for the election of President and Vice President of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be entitled to receive the sum of five dollars per day for each day's attendance at such election, and fifteen cents per mile for each mile he shall travel in going to and returning from the place where the Electors shall meet, by the most usual traveled route, to be paid out of the general fund, and the State Auditor shall audit the amount and draw his warrant for the same.

Historical: Laws 1899, 66, Sec. 5; re-
enacting Laws 1890-91; 57, Sec. 115.

CHAPTER 13.

REMOVAL OF COUNTY SEATS AND CHANGING COUNTY BOUNDARIES.

Section	Section
466. Time for holding county seat election.	473. Voting for removal of county seat.
467. Petition for removal.	474. Same: Challenging voters.
468. Same: How signed.	475. Canvass of returns.
469. Petition open to inspection.	476. Same: Result of vote.
470. Contesting right to sign petition.	477. Changing county boundaries.
471. Same: Procedure in case of contest.	478. Conduct of election.
472. Same: Contests have precedence.	479. Form of ballot.

Time for Holding County Seat Election.

Sec. 466. All elections for the removal of county seats shall be held at the same time and place at which general elections are held.

Historical: Laws 1899, 33, Sec. 105; re-enacting Laws 1890-91, 57, Sec. 118.

Cross Reference: Question of re-

moval of county seats to be presented not more than once in six years; Const. Art. 18, Sec. 2.

Petition for Removal.

Sec. 467. Public notice shall be given of the intention to circulate a petition praying for the removal of the county seat of any county from its then present location to some other point within said county, and in said petition designated, at least ten days before the same is circulated, by publication in some newspaper printed in the county (if there be one), and by posting three printed notices in three public places at the county seat, and a like number at the place to which the county seat is proposed to be removed, in which notices the intent of said petition shall be set forth; and all signers to such petition or petitions shall be void and stricken from such petition if procured six months before the first day of the term of court at which the application is to be made; and whenever such petition or petitions, addressed to the District Court of such county, and stating the time when such election shall be held, shall be signed by a number of legal voters of said county, equal in number to a majority of all votes cast at the last general election therein, and shall be filed in the office of the clerk of the District Court of said county, not less than twenty nor more than forty days before the first day of the term of said court next preceding the next general election, unless said term commences after the first day of October, then, in such case, the next preceding term. Such petition shall be deemed a proposal to remove the county seat of such county, and the point designated in said petition shall be deemed and taken as fixed by said petition, in pursuance of law, whenever the court shall order an election to such point as hereinafter provided, as the point to which it is proposed to remove the county seat of such county.

Historical: Laws 1899, 33, Sec. 106; re-enacting Laws 1890-91, 57, Sec. 119.

Qualification of Signers: The signers of the petition for the removal of a county seat need not be registered voters, but merely persons who are qualified to register as voters. *Wilson v. Bartlett* (1900) 7 Ida. 271; 62 Pac. 416.

Same—Determination of Qualifications: When a petition is presented to a court for the removal of a county seat and all the signers of said petition state over their signatures that

they are qualified electors of such county, the petitioners make a prima facie case, and no further evidence of the qualifications of such signers is required unless a contestant appears as provided by law, and enters his contest. If specifications in contestant's affidavit raise no valid objection to the qualifications of any of the signers of the petition, the court is justified in finding, without further proof, that all of the signers of said petition are qualified electors. *Ib.*

Same: How Signed.

Sec. 468. Each petitioner signing such petition shall write, or cause to be written, opposite to his name on said petition, the name of the city and ward in which he then resides, if he resides in a city; or, if he does not reside in a city, then the name of the precinct in

which he resides at the time of signing such petition; and no person shall sign such petition unless he shall be, at the time, a legal voter at general elections.

Historical: Laws 1899, 33, Sec. 107;
re-enacting Laws 1890-91, 57, Sec. 120.

Petition Open to Inspection.

Sec. 469. Said petition or petitions shall, after they are filed in the office of the clerk of the District Court of the county be open to the inspection of any and all citizens of the county, but shall not be removed therefrom.

Historical: Laws 1899, 33, Sec. 108;
re-enacting Laws 1890-91, 57, Sec. 121.

Contesting Right to Sign Petition.

Sec. 470. Any citizen and legal voter at general elections in said county may contest the right of any person whose name is subscribed to said petition, to sign such petition under this chapter, and shall have the right to contest said petition as to any names subscribed thereto that he shall have good reason to believe are fictitious: *Provided*, He shall, ten days before the first day of the term of said court, file in the office of the clerk of the District Court of such county, a list of the names of the persons whose right to sign said petition he is desirous of contesting, together with his affidavit indorsed thereon, that he has good reason to believe, and does verily believe that such persons named in said list are not legal voters of such county and had no right in law to sign such petition; and shall also file in the office of said clerk, ten days before said term of said court, a list of such names as he has reason to believe are fictitious, together with his affidavit, that he has good reason to believe, and does verily believe, that such names are fictitious; and such persons shall have the right to contest such petitions only as to the names included in said lists.

Historical: Laws 1899, 33, Sec. 109;
re-enacting Laws 1890-91, 57, Sec. 122.

Affidavit of Contest: The affidavit of a contestant in a county seat removal case, must show that the list of names that he desires to contest, if stricken from the petition, would reduce the

number of names on the petition to less than the number required by law to be on such petition; if it does not, the trial court ought to deny the contest and strike the affidavit from its files. *Wilson v. Bartlett* (1900) 7 Ida. 271; 62 Pac. 416.

Same: Procedure in Case of Contest.

Sec. 471. It shall be the duty of said court, on the first day of and during said term of court, to hear all evidence for and against said petition or petitions as to the lists of names filed in said court under this chapter, and to strike from such petition or petitions all names proven by competent evidence to be fictitious, and the names of persons having no legal right to sign the same under this chapter. In case there shall be no contest, or if the court finds, after striking from said petition or petitions all names proven to be fictitious, and all names not legally signed thereto, that it still contains the number of names of legal voters required by this chapter, the court shall order said election according to the prayer of said petition. In case

of a contest to said petition or petitions, it shall be the duty of the clerk of said court, on request of the persons contesting any petition under the provisions of this chapter, to issue subpoenas for such witnesses as said persons shall name; and it shall be the duty of said clerk, on request of any legal voter of the county for the purpose of sustaining any petition, in like manner to issue subpoenas for such witnesses as he shall name. Said subpoenas to be made returnable to the term of court at which such contest will be made.

Historical: Laws 1899, 33, Sec. 110;
re-enacting Laws 1890-91, 57, Sec. 123.

Same: Contests Have Precedence.

Sec. 472. All cases of contest arising upon said petitions or affidavits shall have precedence over all other cases at said term of said court, and shall be heard and determined at said term, and the decision of the court shall be final.

Historical: Laws 1899, 33, Sec. 111;
re-enacting Laws 1890-91, 57, Sec. 124.

Right of Appeal: This section was not intended to take away the right of appeal in proceedings of this kind, and by the language, "the decision of

the court shall be final," it was intended to indicate that such decision was in harmony with Section 4807 of the Revised Statutes and appealable. *Wilson v. Bartlett* (1900) 7 Ida. 269; 62 Pac. 415.

Voting for Removal of County Seat.

Sec. 473. The voting for the removal of any county seat shall be by ballot, and each ballot shall have printed or written thereon the words stated in Section 479. Such ballot shall be smaller than the general election ballots, and shall be officially stamped, and there shall be printed or written thereon the words "County Seat Ballot," and any elector who is registered, as in this title provided, and who, in addition to being qualified to vote for county officers, has resided in the county six months, and in the precinct ninety days, shall be permitted to vote for or against the removal of the county seat, by handing to one of the judges of election a county seat ballot, at the same time announcing that he is entitled to vote on the question of the removal of the county seat. If the judges of election are of the opinion that the said elector is entitled to vote on the question of the removal of the county seat, his ballot shall then be deposited in the ballot box, and the clerks of election shall write opposite his name in brackets the words "County Seat" or "County Division," as the case may be.

Historical: Laws 1899, 33, Sec. 112;
re-enacting Laws 1890-91, 57, Sec. 125.

voters at county seat elections: Const. Art. 18, Sec. 2.

Cross Reference: Qualifications of

Same: Challenging Voters.

Sec. 474. Any person who offers to vote on the question of the removal of the county seat may be challenged by any person and for any of the reasons allowed for other challenges, and the rules provided for other challenges shall apply to such challenges.

Historical: Laws 1899, 33, Sec. 113;
re-enacting Laws 1890-91, 57, Sec. 126.

Canvass of Returns.

Sec. 475. The returns for county seat elections shall be canvassed by the same officers and in the same manner as the returns for county and precinct officers are canvassed, and the result of the vote for the removal of the county seat shall be officially declared by the county board of canvassers in the following manner:

They shall record the total votes cast in each ward or precinct both for and against the proposed removal, upon the book provided for recording the results of the general election. This record shall be made upon a separate page, or pages, of said book, and after the record is complete, and the total result known, they shall make a complete copy of such record, certified to by each member of the board. They shall deposit this certificate with the county auditor, who shall, without delay, file the same with the clerk of the District Court which authorized the election, and the auditor shall also cause a copy of the certificate to be published in some newspaper of general circulation in the county.

Historical: Laws 1899, 33, Sec. 114;
re-enacting Laws 1890-91, 57, Sec. 127.

Same: Result of Vote.

Sec. 476. When the attempt has been made to remove the county seat of any county, as in this chapter provided, and the county board of canvassers have found and declared that two-thirds of the voters of the county who have voted for or against such removal have voted in favor of such removal, then said county seat of said county is thereby removed to the point named in the petition.

Historical: Laws 1899, 33, Sec. 115;
re-enacting Laws 1890-91, 57, Sec. 128.

active vote required: Const. Art. 18,
Sec. 2.

Cross Reference: Two-thirds affirm-

Changing County Boundaries.

Sec. 477. Whenever the Legislature has enacted that a part of any county be stricken off from any county, and annexed to an adjoining county, the provisions of the Constitution being complied with, the qualified electors who have resided ninety days next preceding the first general election after the passage of this chapter within the boundary lines of the territory stricken off and annexed, shall be permitted to vote at said general election, for or against said annexation. If a majority of said electors voting at said election vote in favor of annexation, said territory is then stricken off and annexed, as provided in this chapter: *Provided*, That all the requirements of the Constitution have been complied with.

Historical: Laws 1899, 33, Sec. 116;
re-enacting Laws 1890-91, 57, Sec. 129.

Cross Reference: Constitutional re-
quirements: Art. 18, Secs. 3, 4.

Conduct of Election.

Sec. 478. The rules and regulations for voting at county seat elections, as provided in this chapter, so far as they apply to ballots, voting, challenging, canvassing the returns and declaring the result, shall apply to elections for the striking off of any part of any county and annexing the same to any adjoining county.

any special election for a member of the Legislature, or Representative in Congress, shall transmit to the Secretary of State an abstract of the votes cast at said election, if there be more than one county in the district.

Historical: Laws 1899, 33, Sec. 158; re-enacting Laws 1890-91, 57, Sec. 178. Omitting the words "mentioned in the preceding subdivision" after "vacan-

cies in offices" as those words are meaningless, no offices being mentioned in the preceding subdivision or section.

Same: Time of Meeting.

Sec. 482. Within ten days after said election in the case last mentioned, the Board of State Canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding five days, for the purpose of receiving said returns.

Historical: Laws 1899, 33, Sec. 159; re-enacting Laws 1890-91, 57, Sec. 179.

General Election Law Applicable.

Sec. 483. The provisions relating to general elections shall govern special elections, except where otherwise provided for.

Historical: Laws 1899, 33, Sec. 160; re-enacting Laws 1890-91, 57, Sec. 177.

Notice of Special Election.

Sec. 484. Whenever a special election is ordered by the board of commissioners, notice must be issued and posted in the same manner as for a general election.

Historical: Laws 1899, 33, Sec. 161; re-enacting Laws 1890-91, 57, Sec. 24.

TITLE 4

EDUCATION

Chapter

1. State University.
2. Lewiston Normal School.
3. Albion Normal School.
4. Summer normal schools.

Note: Education of deaf, dumb and Training School: Secs. 805-832.

Chapter

5. Academy of Idaho.
 6. Public schools.
 7. State Library Commission.
 8. Public libraries.
- d blind: Secs. 800-804. Industrial

CHAPTER 1.

STATE UNIVERSITY.

Section

485. University established.
486. Board of regents.
487. Executive committee of board.
488. General duties of board.
489. Meetings of board.
490. Powers of board: Sectarian tests prohibited.
491. Same: Erection of buildings.
492. Duties of treasurer.

Section

493. Report of regents.
494. Expenses of regents.
495. Powers of president and faculty.
496. Departments of university.
497. Same.
498. Women students admitted.
499. Tuition not required.

University Established.

Sec. 485. There is hereby established in this State, at the town of Moscow, in the county of Latah, an institution of learning, by the name and style of "The University of Idaho."

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 1.

Cross Reference: Location and

rights confirmed: Const. Art. 9, Sec. 10.

Board of Regents.

Sec. 486. The government of the University shall vest in a board of regents, to consist of five members chosen from the State at large, which board the Governor shall nominate, and, with the advice and consent of the Senate, appoint. The said board shall be non-partisan; no more than three of the members shall be of the same political party. The terms of office of said regents shall be six years from the first Monday in February in the year in which appointed. Two members shall be appointed each odd numbered year: *Provided*, That the present members of said board shall hold office for the remainder of their respective terms. The Governor shall have power to fill vacancies in the board by appointment, which appointment shall be valid until the last day of the regular session of the Legislature following such appointment.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 2, amended Laws 1901, 14, Sec. 2. Rewritten by omit-

ting proviso relating to the regents appointed in 1901, and preserving the present constitution of the board.

Executive Committee of Board.

Sec. 487. The president and secretary ex-officio, and one member or the board to be appointed by the president thereof, shall constitute an executive committee of said board, whose duties shall be prescribed by the by-laws of the board.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 15.

General Duties of Board.

Sec. 488. The board of regents and their successors in office, shall constitute a body corporate by the name of "The Regents of the University of Idaho," and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said University. The board shall elect a president, secretary and treasurer, who shall perform such duties as shall be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board and of the executive committee thereof. The treasurer shall perform all the duties of such office, subject to such regulations as the board may adopt, and for the faithful discharge of all his duties shall execute a bond in such sum as the board may direct.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 3.

general supervision of University and the control and direction of its funds: Const. Art. 9, Sec. 10.

Cross Reference: Regents to have

Meetings of Board.

Sec. 489. The time of the election of the president, secretary and treasurer of said board, and the duration of their respective terms of office and the times for holding the regular annual meeting and such other meetings as may be required, and the manner of notifying the same, shall be determined by the by-laws of the board. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 4.

Powers of Board: Sectarian Tests Prohibited.

Sec. 490. The board of regents shall enact laws for the government of the University in all its branches, elect a president and the requisite number of professors, instructors, officers and employes, and fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction either sectarian in religion or partisan in politics shall ever be allowed in any department of the University, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of regents or in the election of professors, teachers, or other officers of the University, or in the admission of students thereto, or for any purpose whatever. The board of regents shall have power to remove the president or any professor, instructor or officer of the university, when, in their judgment, the interests of the University require it. The board

may prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories and all other property of the University and of its several departments, and for the care and preservation thereof, with penalties and forfeitures, by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such action.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 5.

qualifications and teachings prohibited: Const. Art. 9, Sec. 6.

Cross Reference: Religious tests,

Same: Erection of Buildings.

Sec. 491. The board of regents are authorized to expend such portion of the income of the University fund as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 6: Omitting "hereinafter created" after "university fund." The act created no permanent fund, but merely appropriated \$15,000 for the purchase and improvement of a site. Sec. 11 of the Idaho Admission Bill (page 55 ante) granted 50,000 acres of land to the State for university purposes, and this grant is reg-

ulated by Const. Art. 9, Secs. 10, 11. Special appropriations and bond issues have been made and provided for from time to time for the support and improvement of the University, and the "University Fund" is created by Laws 1905, 417, which is not included in these Codes, but is preserved by the table of Special Laws (Sec. 17).

Duties of Treasurer.

Sec. 492. The treasurer of said board shall, out of any moneys in his hands belonging to said board, pay all orders drawn upon him by the president and secretary thereof, when accompanied by vouchers fully explaining the character of the expenditure, and the books and accounts of the treasurer shall at all times be opened to the inspection of the board. The treasurer shall make an annual report to the president of the board of all transactions connected with the duties of his office.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 17.

Report of Regents.

Sec. 493. At the close of each fiscal year, the regents, through their president, shall make a report in detail to the Governor, exhibiting the progress, conditions and wants of the University, the courses of study, the number of professors and students, the amount of receipts and disbursements, together with the nature, costs and results of all important investigations and experiments, and such other information as they may deem important.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 7.

Expenses of Regents.

Sec. 494. The regents shall receive the actual amount of their expenses in traveling to and from, and in attendance upon, all meetings of the board, or incurred in the performance of any duty in pursuance of any direction of the board. Accounts of such expenses shall be duly authenticated and audited by the board and be paid

on their order by the Treasurer out of any fund belonging to the University not otherwise appropriated; no regent shall receive any pay, mileage or per diem, except as above prescribed.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 19.

Powers of President and Faculty.

Sec. 495. The president of the University shall be president of the faculty, or of the several faculties as they may be hereafter established, and the executive head of the instructional force in all its departments. As such, he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigation of the University, and so long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. The immediate government of the University shall be entrusted to the faculty, but the regents shall have the power to regulate the courses of instruction, and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in Universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other cause prescribed by such by-laws.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 8.

also a member of the State Library Commission: Sec. 672.

Cross Reference: The president is

Departments of University.

Sec. 496. The object of the University of Idaho shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, and to this end it shall consist of the following colleges or departments, to-wit:

1. The College or Departments of Arts.
2. The College or Department of Letters.
3. The professional or other colleges or departments, as may from time to time be added thereto or connected therewith.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 9.

Same.

Sec. 497. The college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture and commerce, and such branches included in the college of letters as shall be necessary to a proper fitness of the pupils in the scientific and practical courses for their chosen pursuits; and as soon as the income of the University will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the University, each with its own faculty and appropriate title. The college of letters shall be co-existent with the college of arts and shall embrace a liberal course of instruction in language, literature

and philosophy, together with such courses or parts of courses in the college of arts as the regents of the University shall prescribe.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 10.

Woman Students Admitted.

Sec. 498. The University shall be open to female as well as male students, under such regulations and restrictions as the board of regents may deem proper.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 11.

Tuition Not Required.

Sec. 499. No student who shall have been a resident of the State for one year next preceding his admission shall be required to pay any fees for tuition in the University, excepting in a professional department and for extra studies. The regents may prescribe rates of tuition for any pupil in a professional department, or who shall not have been a resident as aforesaid, and for teaching extra studies.

Historical: Act 15th Ter. Ses. (Laws 1888-89) 21, Sec. 12.

CHAPTER 2.

LEWISTON NORMAL SCHOOL.

Section

- 500. Establishment of school.
- 501. Constitution of board of trustees.
- 502. Meetings, officers and proceedings of board.
- 503. General powers and duties of board.
- 504. Same: Control of funds.
- 505. Meetings of board.
- 506. Election of principal.
- 507. Course of study, certificates and diplomas.

Section

- 508. Text books, supplies and apparatus.
- 509. Training or model schools.
- 510. Admission of pupils.
- 511. Same: Pupils from other States.
- 512. Scientific lectures.
- 513. Expenses of trustees.
- 514. Government of school and pupils.
- 515. Report of trustees.

Establishment of School.

Sec. 500. A normal school for the State of Idaho is hereby established in the City of Lewiston, in the County of Nez Perce, to be called the Lewiston State Normal School, the purpose of which shall be training and educating teachers in the art of instruction and governing in the public schools of this State, and teaching the various branches that pertain to a good common school education.

Historical: Laws 1899, 164, Sec. 1; re-enacting Laws 1893, 6, Sec. 1. Omitting the proviso, which authorized the conveyance of a site to the

board of trustees by the city of Lewiston, the purposes of which have been accomplished.

Constitution of Board of Trustees.

Sec. 501. The said Lewiston State Normal School shall be under the direction of a board of trustees to be known as "The Board of Trustees of the Lewiston State Normal School." The said board of trustees shall consist of seven members, one of whom shall be the

State Superintendent of Public Instruction ex-officio. The remaining six members shall be present trustees, who shall hold office for the term for which they were appointed in the same manner as if these Codes had not been enacted. Their successors shall be appointed for the term of six years by the Governor of the State of Idaho, by and with the advice and consent of the Senate, the terms of two of said appointed trustees expiring on the twenty-seventh day of January of every odd numbered year. The Governor shall fill by appointment all vacancies that may, from any cause, occur in said board of trustees. Before entering upon the duties of his office, each of said trustees shall take and subscribe an oath or affirmation, before some person duly authorized to administer the same, that he will support the Constitution of the United States and of the State of Idaho, and will faithfully and impartially discharge the duties of the office of trustee of the Lewiston State Normal School, which oath or affirmation shall be filed in the office of the Secretary of State.

Historical: Laws 1893, 6, Sec. 2, re-enacted Laws 1899, 164, Sec. 2, amended Laws 1899, 369, Sec. 1. The portion relating to the constitution of the board is re-written so as to omit specific names and to preserve the ex-

isting constitution of the board. The State Superintendent is added to the board on the authority of Laws 1903, 222, Sec. 1. The provision for filling vacancies in the board is taken from Sec. 15 of the acts of 1893 and 1899.

Meetings, Officers, and Proceedings of Board.

Sec. 502. The said board of trustees may conduct its proceedings in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of the said board of trustees shall be entered of record. Said board of trustees shall have an official seal, which shall be judiciously noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their number a president and a secretary. The State Treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and an itemized account of all expenditures authorized by said board.

Historical: Laws 1899, 164, Sec. 3; re-enacting Laws 1893, 6, Sec. 3.

General Powers and Duties of Board.

Sec. 503. The said board of trustees are hereby authorized, and it is made their duty, to take and at all times to have general supervision and control of all buildings and property appertaining to said Normal School; and to have general charge and control of the construction of all buildings to be built. They shall have power to let contracts for buildings and completion of any such buildings, and the entire supervision of their construction.

Historical: Laws 1899, 164, Sec. 4; re-enacting Laws 1893, 6, Sec. 4.

Same: Control of Funds.

Sec. 504. One-half of all funds appropriated for the use and benefit of normal schools in the State of Idaho, from every source, including sales of land donated by the government of the United States to the State of Idaho, for the establishment and maintenance of State normal schools, shall be under the direction and control of the said board of trustees subject to the provisions herein contained. The treasurer of the board shall pay out of such funds all orders or drafts for money to be expended under the provisions of this chapter. Such orders or drafts shall be drawn by the State Auditor on certificates of the secretary, countersigned by the president, of the said board of trustees. No such certificates shall be given except upon accounts audited and allowed by the said board: *Provided*, Not more than fifty thousand acres of said lands shall ever be sold for said purpose of establishing and maintaining the Lewiston State Normal School, and said board of trustees shall never use more of said funds than necessary for the purpose of carrying out the provisions of this chapter.

Historical: Laws 1899, 164, Sec. 5; re-enacting Laws 1893, 6, Sec. 5. Omitting the first proviso which is obsolete

since the establishment of the Albion Normal School.

Meetings of Board.

Sec. 505. The board of trustees shall hold two regular meetings annually, at the said City of Lewiston, but special meetings may be called by the president of the board by sending written notice, at least ten days before such meeting, to each member.

Historical: Laws 1899, 164, Sec. 6; re-enacting Laws 1893, 6, Sec. 6.

Election of Principal.

Sec. 506. The board of trustees shall have power to elect a principal and all other teachers that may be deemed necessary, to fix salaries of the same and to prescribe their duties. They shall have power to remove either the principal, assistant or teachers, and appoint others in their stead.

Historical: Laws 1899, 164, Sec. 7; re-enacting Laws 1893, 6, Sec. 7.

Course of Study, Certificates and Diplomas.

Sec. 507. It shall be the duty of the board of trustees to prescribe the course of study and the time and standard of graduation, and to issue such certificates and diplomas as may from time to time be deemed suitable. These certificates and diplomas shall entitle the holder to teach in the public schools of any county in this State for the time and in the grade specified in the certificate or diploma.

Historical: Laws 1899, 164, Sec. 8; re-enacting Laws 1893, 6, Sec. 8.

Text Books, Supplies and Apparatus.

Sec. 508. The board of trustees shall prescribe the text books, apparatus, and furniture, and provide the same, together with all necessary stationery for the use of pupils.

Historical: Laws 1899, 164, Sec. 9;
re-enacting Laws 1893, 6, Sec. 9.

Training or Model Schools.

Sec. 509. The board of trustees shall, when deemed expedient, establish and maintain a training or model school or schools, in which the pupils of the normal school shall be required to instruct classes under the supervision and direction of experienced teachers.

Historical: Laws 1899, 164, Sec. 10;
re-enacting Laws 1893, 6, Sec. 10.

Admission of Pupils.

Sec. 510. The board of trustees shall ordain such rules and regulations for the admission of pupils to said Normal School as they shall deem necessary and proper. All classes may be admitted into the said normal school who are admitted without restriction into the public schools of the State: *Provided*, The applicant, if a male, must be not less than sixteen years of age, or if a female, not less than fifteen years of age. Applicants must also present letters of recommendation from the county superintendent of public instruction of the county in which they reside, certifying to their good moral character and their fitness to enter the Normal School. Before entering all applicants must sign the following declaration: "We hereby declare that our purpose in entering the Lewiston State Normal School is to fit ourselves for the profession of teaching, and that it is our intention to engage in teaching in the public schools of this State."

Historical: Laws 1899, 164, Sec. 11;
re-enacting Laws 1893, 6, Sec. 11.

Same: Pupils From Other States.

Sec. 511. Pupils from other States and Territories may be admitted to all the privileges of the said Normal School, on presenting letters of recommendation from the Executive or State School Superintendent thereof, and the payment of one hundred dollars. Pupils from other states shall not be required to sign the declaration named in the foregoing section.

Historical: Laws 1899, 164, Sec. 12;
re-enacting Laws 1893, 6, Sec. 12.

Scientific Lectures.

Sec. 512. Lectures in chemistry, comparative anatomy, agricultural chemistry, and any other science or any other branch of literature that the board of trustees may direct, may be delivered to those attending such school, in such manner and on such conditions as the board of trustees may prescribe.

Historical: Laws 1899, 164, Sec. 13;
re-enacting Laws 1893, 6, Sec. 13.

Expenses of Trustees.

Sec. 513. The actual and necessary personal expenses incurred by the members of the board of trustees, in carrying out the provisions of this chapter, shall be paid, on the proper certificate, out of any funds belonging to said Normal School in the hands of the treasurer.

Historical: Laws 1899, 164, Sec. 14;
re-enacting Laws 1893, 6, Sec. 14.

Government of School and Pupils.

Sec. 514. The board of trustees, in their regulations, and the principal and assistants in their supervision and government of the said school, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in said school.

Historical: Laws 1899, 164, Sec. 17;
re-enacting Laws 1893, 6, Sec. 17.

Cross Reference: Religious tests,

qualifications and teachings prohibited: Const. Art. 9, Sec. 6.

Report of Trustees.

Sec. 515. The president and secretary of the board of trustees shall, on or before the first day of December of each year transmit to the Governor of the State, a full report of the doings of the said board of trustees, the progress and condition of the said Normal School, together with a full report of the expenditures of the same for the previous year, setting forth each item in full, and the date thereof, and such recommendations as they deem proper for the good of said Normal School.

Historical: Laws 1899, 164, Sec. 16;
re-enacting Laws 1893, 6, Sec. 16. "On
or before the first day of December"

inserted for "on the first day of January" to conform to Laws 1903, 149, Sec. 1 (Codes, Sec. 279).

CHAPTER 3.

ALBION NORMAL SCHOOL.

Section

- 516. Establishment of school.
- 517. Constitution of board of trustees.
- 518. Title to property.
- 519. Proceedings of board.
- 520. Control of buildings.
- 521. Control of funds.
- 522. Meetings of board.
- 523. Election and removal of principal and teachers.
- 524. Course of study, certificates and diplomas.

Section

- 525. Text books, apparatus and furniture.
- 526. Training or model schools.
- 527. Admission of pupils.
- 528. Same: Pupils from other States.
- 529. Lecture courses.
- 530. Expenses of board.
- 531. Report to Governor.
- 532. Supervision of pupils.

Establishment of School.

Sec. 516. A Normal School for the State of Idaho is hereby established at or near the Town of Albion, in the County of Cassia, to be called the Albion State Normal School, the purpose of which will be training and educating teachers in the art of instruction and governing in the public schools of the State, and teaching the various branches that pertain to a good common school education.

Historical: Laws 1899, 228, Sec. 1;
re-enacting Laws 1893, 179, Sec. 1,
omitting the proviso relating to the
donation of land for the school, the
purposes of which have been accom-

plished. The concluding clause, vesting title to real estate in the trustees, is covered by the third section of the article (Sec 518, post).

Constitution of Board of Trustees.

Sec. 517. The Albion State Normal School shall be under the direction of a non-partisan board of trustees, consisting of six members—exclusive of the State Superintendent of Public Instruction, who is ex-officio a member of said board—no more than four of whom shall be of the same political party. Said board shall be known as the “Board of Trustees of the Albion State Normal School.” The board of trustees as at present constituted shall continue to hold office during the respective terms of the members thereof, and their successors shall be appointed for the term of six years from and after the fifth day of March, by the Governor of the State of Idaho, by and with the advice and consent of the Senate, and in such a manner that two trustees shall be appointed each odd numbered year. It shall be the duty of the Governor to fill, by appointment, all vacancies that may from any cause occur in said board of trustees. Before entering upon the duties of their office, each of the trustees provided for in this chapter shall take and subscribe an oath or affirmation that he will support the Constitution of the United States, and the Constitution and Laws of the State of Idaho, and will faithfully and impartially discharge the duties of said office, which oath or affirmation shall be filed in the office of the Secretary of State.

Historical: Laws 1893, 179, Sec. 15; re-enacted Laws 1899, 228, Sec. 2; amended Laws 1905, 129, Sec. 1. Rewritten so as to omit the provisions for the first board of trustees, to preserve the present constitution of the board, and to include the State Su-

perintendent of Public Instruction as a member of the board as provided for in Laws 1903, 222, Sec. 1. The section also includes Sec. 15 of the 1893 (Sec. 16 of 1899) Law providing for filling vacancies in the board.

Title to Property.

Sec. 518. All the rights, powers, duties, and title to real estate or personal property belonging to or vested in said Albion State Normal School are hereby vested in the trustees of said school herein provided for.

Historical: Laws 1899, 228, Sec. 3.

Proceedings of Board.

Sec. 519. The said board of trustees may conduct its proceedings in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of said board of trustees shall be entered of record. Said board of trustees shall have an official seal, which shall be judicially noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their number a president and secretary. The State Treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and an itemized account of all expenditures authorized by said board.

Historical: Laws 1899, 228, Sec. 4;
re-enacting Laws 1893, 179, Sec. 3.

Control of Buildings.

Sec. 520. The said board of trustees are hereby authorized, and it is made their duty, to take and at all times to have general supervision and control of all buildings and property appertaining to said Normal School, and to have general charge and control of the construction of all buildings to be built. They shall have power to let contracts for building and completion of any such buildings, and the entire supervision of their construction.

Historical: Laws 1899, 228, Sec. 5;
re-enacting Laws 1893, 179, Sec. 4.

Control of Funds.

Sec. 521. All funds appropriated for the use and benefit of said Normal School, from every source, including the pro rata share of the available proceeds of sales of lands granted by the Government of the United States to the State of Idaho for the establishment and maintenance of State Normal Schools due to said Normal School, shall be under the direction and control of the said board of trustees subject to the provisions herein contained. The treasurer of the board of trustees shall pay out of such funds all orders or drafts for money to be expended under the provisions of this chapter. Such orders or drafts shall be drawn by the State Auditor on certificates of the secretary, countersigned by the president of said board of trustees, and approved by the State Board of Examiners. No such certificates shall be given except on accounts audited and allowed by said board of trustees.

Historical: Laws 1899, 228, Sec. 6;
re-enacting Laws 1893, 179, Sec. 5.

Meetings of Board.

Sec. 522. The board of trustees shall hold two regular meetings annually, at the said Town of Albion, but special meetings may be called by the president of the board by sending written notice of at least ten days to each member.

Historical: Laws 1899, 228, Sec. 7;
re-enacting Laws 1893, 179, Sec. 6.

Election and Removal of Principal and Teachers.

Sec. 523. The board of trustees shall have power to elect a principal and all other teachers that may be deemed necessary, to fix the salaries of the same and to prescribe their duties. They shall have power to remove either the principal, assistant, or teachers, and appoint others in their stead.

Historical: Laws 1899, 228, Sec. 8;
re-enacting Laws 1893, 179, Sec. 7.

Course of Study, Certificates and Diplomas.

Sec. 524. It shall be the duty of the board of trustees to prescribe the course of study, and the time, and standard, of graduation, and to issue such certificates and diplomas as may from time to time be deemed suitable. These certificates and diplomas shall entitle

the holders to teach in the public schools in any county in this State for the time and in the grade specified in the certificate or diploma.

Historical: Laws 1899, 228, Sec. 9;
re-enacting Laws 1893, 179, Sec. 8.

Text Books, Apparatus and Furniture.

Sec. 525. The board of trustees shall prescribe the text books, apparatus, and furniture, and provide the same, together with all necessary stationery for the use of pupils.

Historical: Laws 1899, 228, Sec. 10;
re-enacting Laws 1893, 179, Sec. 9.

Training or Model Schools.

Sec. 526. The board of trustees shall, when deemed expedient, establish and maintain a training or model school or schools in which the pupils of the Normal School shall be required to instruct classes, under the supervision and direction of experienced teachers.

Historical: Laws 1899, 228, Sec. 11;
re-enacting Laws 1893, 179, Sec. 10.

Admission of Pupils.

Sec. 527. The board of trustees shall ordain such rules and regulations for the admission of pupils to said Normal School as they shall deem necessary and proper. All classes may be admitted into the said Normal School who are admitted without restriction into the public schools of the State: *Provided*, The applicant, if a male, must be not less than sixteen years of age, or if a female, not less than fifteen years of age. Applicants must also present letters of recommendation from the county superintendent of public instruction, of the county in which they reside, certifying to their good moral character and their fitness to enter the Normal School. Before entering, all applicants must sign the following declaration: "We hereby declare that our purpose in entering the Albion State Normal School is to fit ourselves for the profession of teaching, and that it is our intention to engage in teaching in the public schools of this State."

Historical: Laws 1899, 228, Sec. 12;
re-enacting Laws 1893, 179, Sec. 11.

Same: Pupils From Other States.

Sec. 528. Pupils from other States and Territories may be admitted to all the privileges of said Normal School on presenting letters of recommendation from the Executive, or State School Superintendent thereof, and paying such tuition fee as the board of trustees may prescribe. Each of such pupils must sign the following declaration: "I hereby declare that my purpose in entering the Albion State Normal School is to fit myself for the profession of teaching."

Historical: Laws 1899, 228, Sec. 13;
re-enacting Laws 1893, 179, Sec. 12;
amended Laws 1895, 19, Sec. 1.

Lecture Courses.

Sec. 529. Lectures in chemistry, comparative anatomy, the me-

chanical arts, agricultural chemistry, and any other science, or any other branch of literature that the board of trustees may direct, may be delivered to those attending such school, in such manner and on such conditions as the board of trustees may prescribe.

Historical: Laws 1899, 228, Sec. 14;
re-enacting Laws 1893, 179, Sec. 13.

Expenses of Board.

Sec. 530. The actual and necessary personal expenses incurred by the members of said board of trustees in carrying out the provisions of this chapter shall be paid on the proper certificate out of any funds belonging to said Normal School, in the hands of the treasurer.

Historical: Laws 1899, 228, Sec. 15;
re-enacting Laws 1893, 179, Sec. 14.

Report to Governor.

Sec. 531. The president and secretary of the said board of trustees shall, on the first days of January and July of each year, transmit to the Governor of the State a full report of the doings of the said board of trustees and the progress and condition of the said Normal School, together with a full report of the expenditures of the same for the previous six months, setting forth each item in full, and the date thereof, and such recommendations as they deem proper for the good of said Normal School.

Historical: Laws 1899, 228, Sec. 17;
re-enacting Laws 1893, 179, Sec. 16.

Supervision of Pupils.

Sec. 532. The board of trustees in their regulations, and the principal and assistant in their supervision and government of the said school, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian test shall be applied in the selection of teachers, and none shall be adopted in the said school.

Historical: Laws 1899, 228, Sec. 18;
re-enacting Laws 1893, 179, Sec. 17.

qualifications and teachings prohibited: Const. Art. 9, Sec. 6.

Cross Reference: Religious tests,

CHAPTER 4.

SUMMER NORMAL SCHOOLS.

Section

- 533. Commission of Summer Normal Schools.
- 534. Meetings and officers of commission.
- 535. Courses of study.
- 536. Report to Governor.
- 537. Places of holding schools.
- 538. Annual term of schools.

Section

- 539. Who may receive instruction.
- 540. Expense of conducting schools.
- 541. Number of instructors.
- 542. Superintendent to visit schools.
- 543. Use of buildings to be free.
- 544. Allowance of claims.

Commission of Summer Normal Schools.

Sec. 533. A commission of summer Normal Schools is hereby created, consisting of the State Board of Education, the principal of

the Lewiston State Normal School, and the principal of the Albion State Normal School, which commission is hereby authorized to establish three summer normal schools.

Historical: Laws 1907, 225, Sec. 1.

Meetings and Officers of Commission.

Sec. 534. Said commission shall hold at least two meetings annually at a time and place to be designated by the Superintendent of Public Instruction, who shall act as chairman of the commission. The commission shall elect a secretary from their own number at their first regular meeting.

Historical: Laws 1907, 225, Sec. 2.

Courses of Study.

Sec. 535. Said Commission shall determine the courses of study, fix the credit students shall receive for work performed in said schools, and engage a conductor and three or more assistant instructors for each of said schools. One of said instructors shall be from without the State of Idaho.

Historical: Laws 1907, 225, Sec. 3.

Report to Governor.

Sec. 536. The secretary shall keep an accurate record of all business transacted by the commission; keep on file, in the office of the Superintendent of Public Instruction, a duplicate itemized bill of all claims allowed, and make a full and complete report to the Governor on the first day of January of each year, showing items allowed and paid from the "Summer Normal School Fund."

Historical: Laws 1907, 225, Sec. 4.

Places of Holding Schools.

Sec. 537. One of said schools shall be held at Pocatello, Idaho, either in the Academy of Idaho, or in such other place in said city as said commission shall select; one of said schools shall be held in Boise City, Idaho, either in the high school building, or in such other place in said city as the commission shall select, and one of said schools shall be held in Coeur d' Alene, Idaho, in such building in said city as the commission may select.

Historical: Laws 1907, 225, Sec. 5.

Annual Term of Schools.

Sec. 538. The length of the annual term in each of said schools shall not be less than six weeks, beginning with the third Monday in July of each year.

Historical: Laws 1907, 225, Sec. 6, omitting the clause relating to the term to be held in the year 1907.

Who May Receive Instruction.

Sec. 539. Any person may receive instruction in said schools who is a teacher, or expects to become a teacher, in the State of Idaho,

or any other person desiring such instruction, by paying an enrollment fee of not less than one dollar, and otherwise complying with the regulations of the school.

Historical: Laws 1907, 225, Sec. 7.

Expense of Conducting Schools.

Sec. 540. Said commission is authorized to expend for the expenses of conducting each of said schools, not to exceed one thousand dollars per annum of the money appropriated by the State of Idaho, together with all sums received as enrollment fees.

Historical: Laws 1907, 225, Sec. 8. "Hereby" omitted before "appropriated." The appropriation section is omitted in accordance with the general plan to omit all appropriation

acts and sections, but their effect is preserved by the exception to the repeal found in Section 17 of these Codes, which saves existing appropriations.

Number of Instructors.

Sec. 541. In case the annual enrollment of any one of said schools shall be less than seventy-five, said commission may decrease the number of instructors accordingly, and in case said enrollment shall be less than fifty, said commission may discontinue said school. In case the annual enrollment exceeds one hundred, the commission is authorized to increase the number of instructors accordingly.

Historical: Laws 1907, 225, Sec. 9.

Superintendent to Visit Schools.

Sec. 542. It shall be the duty of the Superintendent of Public Instruction to visit each of said schools annually and inspect the work done.

Historical: Laws 1907, 225, Sec. 10.

Use of Buildings to Be Free.

Sec. 543. No part of the money appropriated by the State for the support of said schools shall be used for the payment of rent for the use of any of the buildings in which said schools may be held. The use of said buildings shall be furnished free by the locality where said schools are held.

Historical: Laws 1907, 225, Sec. 11.

Allowance of Claims.

Sec. 544. All bills, accounts, or claims arising in pursuance of the provisions of this chapter must be submitted by an itemized statement in writing, duly verified in duplicate, to the commission, which must be carefully examined by them and passed upon at a regular or special meeting. For any claim found by them to be correct, they must transmit the original itemized bill, account or claim, signed by the secretary, to the State Board of Examiners, through the State Auditor's office, and when allowed by the State Board of Examiners, the same shall be paid by a warrant drawn by the State Auditor on the "Summer Normal School Fund."

Historical: Laws 1907, 225, Sec. 13.

CHAPTER 5.
ACADEMY OF IDAHO.

- Section
- 545. Establishment of academy.
 - 546. Board of trustees, constitution.
 - 547. Same: Title to property.
 - 548. Same: Proceedings of board.
 - 549. Control of board over buildings.
 - 550. Appropriation of lands to academy.
 - 551. Funds: Allowance of bills.

- Section
- 552. Meetings of board.
 - 553. Teachers, course of study and text books.
 - 554. Rules for admission of pupils.
 - 555. Allowance of expenses to board.
 - 556. Report to Governor.
 - 557. Guardianship over pupils.

Establishment of Academy.

Sec. 545. A school which shall be called the Academy of Idaho, is hereby established at the City of Pocatello, Idaho, the purpose of which shall be the teaching of all the branches commonly taught in academies, including also the various studies pertaining to a good common school education, and such special courses as are usually taught in business colleges.

Historical: Laws 1901, 17, Sec. 1, omitting the provisions relating to the conveyance of land to the Academy, which have been complied with and

are now obsolete, and the provisions vesting title to the land conveyed in the trustees, which is covered by Section 3 of the act (Sec. 547, post).

Board of Trustees: Constitution.

Sec. 546. A non-partisan board of trustees to be known as the "Board of Trustees of the Academy of Idaho," consisting of six members, no more than three of whom shall be of the same political party, is hereby created for the management and control of said Academy. Said trustees shall be appointed by the Governor by and with the advice and consent of the Senate for terms of six years, and until their successors are appointed and qualified: *Provided*, That two members of said board shall be appointed each odd numbered year, and the present trustees shall hold office to the expiration of the terms for which they were appointed, in the same manner as if these Codes had not been enacted. It shall be the duty of the Governor to fill by appointment all vacancies that may from any cause occur in the board of trustees. Before entering upon the duties of their office, each of said trustees shall take and subscribe an oath or affirmation that he will support the Constitution of the United States, and the Constitution and laws of the State of Idaho, and will faithfully and impartially discharge the duties of said office, which oath, or affirmation, shall be filed in the office of the Secretary of State.

Historical: Laws 1901, 17, Secs. 2, 12. The provision for filling vacancies is taken from Section 12. The proviso is rewritten so as to omit the

provision for the appointment of the first board and to preserve the present constitution of the board.

Same: Title to Property.

Sec. 547. All rights in and title to real estate or personal property belonging to or vested in said Academy are hereby vested in said board of trustees.

Historical: Laws 1901, 17, Sec. 3.

Same: Proceedings of Board.

Sec. 548. The said board of trustees may conduct its proceedings in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of said board of trustees shall participate in any proceedings in which he has any pecuniary interest. Every vote and official act of said board of trustees shall be entered of record. Said board of trustees shall have an official seal which shall be judicially noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of said board of trustees. At their first meeting and annually thereafter, the said board shall elect from their number a president and a secretary. The State Treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and an itemized account of all the expenditures authorized by said board.

Historical: Laws 1901, 17, Sec. 4.

Control of Board Over Buildings.

Sec. 549. The said board of trustees are hereby authorized, and it is made their duty, to take and at all times to have general supervision and control of all buildings and property appertaining to said academy, and to have general charge and control of the construction of all buildings to be built. They shall have power to let contracts for building any such buildings, and also the entire supervision of their construction.

Historical: Laws 1901, 17, Sec. 5.

Appropriation of Lands to Academy.

Sec. 550. Forty thousand acres of the lands granted to the State of Idaho by an act of Congress, entitled "An act to provide for the admission of the State of Idaho into the Union," approved July 3, 1890, "for other State charitable, educational, penal and reformatory institutions," are hereby appropriated and set apart for the exclusive use and benefit of said Academy, said lands to be held, disposed of, and the proceeds thereof used and applied for the benefit of said Academy, subject to the provisions of said admission bill and of the Constitution of the State of Idaho, and, so far as may be practicable, in conformity with the established procedure of holding, disposing of, and applying the proceeds of the sales of lands granted for the establishment and maintenance of State Normal Schools in Idaho.

Historical: Laws 1901, 17, Sec. 6.

Funds: Allowance of Bills.

Sec. 551. All funds appropriated for the use and benefit of said Academy, from every source, including the available proceeds from the sales of said land, and the sale of bonds provided for said Academy, shall be under the control and direction of said board of trustees, subject to the provisions herein contained. The treasurer of the board of trustees shall pay out of such funds all orders or

drafts for money to be expended under the provisions of this chapter. Such orders or drafts shall be drawn by the State Auditor upon certificates of the secretary, countersigned by the president of said board of trustees, and approved by the State Board of Examiners. No such certificates shall be given except on accounts audited and allowed by said board of trustees.

Historical: Laws 1901, 17, Sec. 7. "Bonds provided for said Academy" inserted for "bonds hereinafter provided for." The provisions for bonds

are omitted from this chapter, but are included in the table of special laws continued in force by Section 17 of these Codes.

Meetings of Board.

Sec. 552. The board of trustees shall hold two regular meetings annually, at the City of Pocatello, but special meetings may be called by the president of the board by sending written notice of at least ten days to each member.

Historical: Laws 1901, 17, Sec. 8.

Teachers, Course of Study and Text Books.

Sec. 553. The board of trustees shall have power to elect a principal and all other teachers that may be deemed necessary, to fix the salaries of the same, and to prescribe their duties. They shall have power to remove the principal or teachers and appoint others in their stead. It shall be the duty of the board of trustees to prescribe the course of study and the time and standard of graduation, and to issue such certificates of graduation and diplomas as may from time to time be deemed suitable. The board of trustees shall prescribe the text books, and shall provide such suitable apparatus and furniture from time to time as they may deem necessary: *Provided*, That for the purpose of prescribing a course of study, but for that purpose only, the president of the State University and the State Superintendent of Public Instruction shall be ex-officio members of the board of trustees.

Historical: Laws 1901, 17, Sec. 9.

Rules for Admission of Pupils.

Sec. 554. The board of trustees shall ordain such rules and regulations for the admission of pupils to said Academy as they shall deem necessary and proper. Pupils from other States and Territories may be admitted to all the privileges of such Academy upon paying such reasonable tuition fee as the trustees may prescribe.

Historical: Laws 1901, 17, Sec. 10.

Allowance of Expenses to Board.

Sec. 555. The actual and necessary personal expenses incurred by the members of said board of trustees in carrying out the provisions of this chapter shall be paid, on the proper certificate, out of any funds belonging to said academy in the hands of the treasurer.

Historical: Laws 1901, 17, Sec. 11.

Report to Governor.

Sec. 556. The president and secretary of said board of trustees shall, on the first days of January and July of each year, transmit

to the Governor of the State a full report of the doings of the said board of trustees, the progress and condition of said academy, together with a full report of the expenditures of the same for the previous six months, setting forth each item in full, and the date thereof, and such recommendations as they deem proper for the good of said academy.

Historical: Laws 1901, 17, Sec. 13.

Guardianship Over Pupils.

Sec. 557. The board of trustees in their regulations, and the principal and assistants in their supervision and government of said school, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian test shall be applied in the selection of teachers, and none shall be adopted in said school.

Historical: Laws 1901, 17, Sec. 14.
Cross Reference: Religious tests,

qualifications and teachings prohibited: Const. Art. 9, Sec. 6.

CHAPTER 6.

PUBLIC SCHOOLS.

Article

1. The State Board of Public Instruction.
2. The State Superintendent.
3. Board of Text Book Commissioners.
4. County superintendent.
5. School funds and finances.
6. School districts.
7. District trustees.

Article

8. Teachers.
9. Compulsory education.
10. Teachers' institutes.
11. School district bonds.
12. Independent school districts.
13. Prevention of disease.
14. Miscellaneous provisions.

Note: The school law constituted Title 3 of the Revised Statutes of 1887. This title was superseded and repealed by an act of the first session of the State Legislature (Laws 1890-91, 131), which in turn was repealed by Laws 1893, 187; re-enacted Laws 1899, 85, which forms the basis of this chapter. The law is said to be derived in part from the New York and Illinois laws of the period, but the present resemblance is very remote.

ARTICLE 1.

THE STATE BOARD OF PUBLIC INSTRUCTION.

Section

558. Constitution of Board.
559. Meetings of Board.
560. Conduct of teachers' examinations.
561. State certificates and diplomas.

Section

562. Diplomas equivalent to teaching experience.
563. University graduates entitled to certificates.
564. Revocation of certificates and diplomas.

Constitution of Board.

Sec. 558. The Superintendent of Public Instruction, the Secretary of State, and the Attorney General shall constitute the State Board of Public Instruction, of which the Superintendent shall be president. The Board shall have power to appoint a secretary.

Historical: Laws 1899, 85, Sec. 1; re-enacting Laws 1893, 187, Sec. 1.

Cross Reference: Board established by Constitution: Art. 9, Sec. 2.

Meetings of Board.

Sec. 559. The Board of Public Instruction shall meet at the capital on the first Monday of June and December of each year for the transaction of business, and at such other times as its president shall direct, and shall have power to adopt rules and regulations, not inconsistent with the laws of this State, for its own government.

Historical: Laws 1899, 85, Sec. 2;
re-enacting Laws 1893, 187, Sec. 2.

Conduct of Teachers' Examinations.

Sec. 560. The State Board shall hold, annually, at least two public examinations of teachers, at each of which examinations one member of the Board shall preside, assisted by such person or persons, not to exceed two in number, as the Board may select, who shall receive for such services not to exceed five dollars per day, and said Board shall keep a full and correct record of its proceedings, and a complete register of all persons to whom certificates are issued.

Historical: Laws 1899, 85, Sec. 3;
re-enacting Laws 1893, 187, Sec. 3.

State Certificates and Diplomas.

Sec. 561. Said Board shall issue State certificates and State diplomas to those persons only who possess good moral character, and who shall have passed a thorough examination in all the branches included in the course of study prescribed for the public schools of the State, didactics and such other branches as the Board may direct: *Provided*, That in no case shall a State certificate be granted unless the applicant has been successfully engaged in teaching for at least three years, and can furnish the Board satisfactory evidence of his or her ability to instruct and properly manage any school in the State, and holds at that time a valid first grade county certificate. Such certificate shall authorize the person to whom it is issued to teach in any public school in the State for a term of eight years from and after the date of its issue, unless sooner revoked by the State Board of Public Instruction; and, *Provided further*, That in no case shall a State diploma be granted unless the applicant has been successfully engaged in teaching for a term of at least five years, two of which shall have been in the State of Idaho, and can furnish the Board satisfactory evidence of his ability to instruct and properly manage any school in the State, and holds at that time a valid State certificate. Such diploma shall authorize the person to whom it is issued to teach in any public schools in the State during the lifetime of the holder, unless revoked by the State Board of Public Instruction: *Provided*, The Board may issue certificates to persons holding State diplomas from other States requiring similar qualifications. Every person before receiving a State diploma shall pay to the State Treasurer the sum of ten dollars, and every person before receiving a State certificate shall pay to the State Treasurer the sum of five dollars, for the use of the teachers' institute fund; and said Board shall require the receipt of said Treasurer before issuing said diploma or said certificate.

The teachers' institute fund shall be used to aid teachers' insti-

tutes, and shall be divided pro rata among the several counties of the State by said Board; and upon demand of said Board, the State Auditor shall draw his warrant upon the State Treasurer, payable to the county superintendent of public instruction of the several counties.

Historical: Laws 1899, 85, Sec. 4;
amended Laws 1905, 83, Sec. 1;
amended Laws 1907, 56, Sec. 1.

Diplomas Equivalent to Teaching Experience.

Sec. 562. The following diplomas shall be considered equivalent to the teaching experience required by the preceding section for State certificates, to-wit: Diplomas from any chartered institutions of this State, of collegiate grade, granted upon a completion of a course of at least five years' work above the eighth grade of the public school system of this State, on the basis of thirty recitations per week, and forty weeks per year, the State Board of Education being the judge of the standard of such schools: *Provided*, That this section shall not be so construed as to permit the issuance of any State certificate without an examination by the State Board of Public Instruction: *Provided, further*, That no certificate shall be issued, under the provisions of this section, to any person who is not eighteen years of age.

Historical: Laws 1901, 30, Secs. 1, 2. Rewritten by inserting the words "by the preceding section" instead of "an act of the Legislature of the State

of Idaho, entitled, 'An act to establish and maintain a system of free schools,' etc.

University Graduates Entitled to Certificates.

Sec. 563. Every graduate from the University of Idaho, receiving either the degree of bachelor of arts or bachelor of science, who has finished a two years' course in the department of pedagogy or has taught successfully in the public schools of the State for a period of five years, and who is recommended by the professor or instructor of pedagogy of said institution, shall receive a State teacher's certificate from the State Superintendent of Public Instruction, who is hereby empowered, and whose duty it is, to issue such certificate to any applicant who has complied with the requirements, and who receives the recommendation provided for in this section.

Historical: Laws 1905, 169, Secs. 1, 2, re-written in combination.

Revocation of Certificates and Diplomas.

Sec. 564. The State Board of Public Instruction shall have the power to revoke any State certificate or State diploma, for any cause of disqualification which would have been sufficient ground for refusing to issue the same, had the cause existed or been known at the time of its issue: *Provided*, That before revoking any such certificate or diploma, the holder thereof shall have at least thirty days' notice to appear before the State Board and show cause why such revocation should not be made.

Historical: Laws 1899, 85, Sec. 5;
re-enacting Laws 1893, 187, Sec. 5.

ARTICLE 2.

THE STATE SUPERINTENDENT.

- Section
- 565. Election, residence and oath of office.
 - 566. Office, seal, etc.
 - 567. Supervision of county superintendents and schools.
 - 568. Preparation of examination questions.

- Section
- 569. Regulation of teachers' institutes.
 - 570. Meetings with county superintendents.
 - 571. General duties.

Election, Residence and Oath of Office.

Sec. 565. There shall be elected biennially, by the qualified electors of the State, a State Superintendent of Public Instruction, who shall reside at the seat of government, and shall perform such duties as are prescribed by the Constitution and laws of the State. Before entering upon the duties of his office the State Superintendent of Public Instruction shall take and subscribe to the oath, prescribed by the Constitution, and execute a bond in the penal sum of two thousand dollars, payable to the State of Idaho, with sureties to be approved by the Governor, conditioned upon the faithful performance of his official duties, and the delivery to his successor of all books, papers, documents and other property belonging to the office. Said bond and oath shall be deposited with the Secretary of State.

Historical: Laws 1899, 85, Sec. 6; re-enacting Laws 1893, 187, Sec. 6. The clause relating to the election and residence of the State Superintendent is taken from Const. Art. 4, Sec. 1.

Cross Reference: Salary: Sec. 274. Term of office and residence at seat of government; Const. Art. 4, Sec. 1; Election: *ib.* Sec. 2; Qualifications: *ib.* Sec. 3. Member Board of Education:

Const. Art. 9, Sec. 2. Member Board of Land Commissioners: Const. Art. 9, Sec. 7; Codes, Sec. 1558. Member Board of Trustees of Industrial Training School: Sec. 806. To prepare course of study for Industrial Training School: Sec. 817. To act as chairman of Commission of Summer Normal Schools: Sec. 534. Member State Library Commission. Sec. 672.

Office Seal, Etc.

Sec. 566. He shall have an office at the capital, where a seal shall be kept which shall be the official seal of the State Superintendent of Public Instruction, by which all his official acts may be authenticated, and all records, books and papers appertaining to the business of this office. He shall file all papers, reports and public documents transmitted to him by the county superintendents of the several counties, and hold the same in readiness to be exhibited to the Governor, or to any committee of any house of the Legislature, or any citizen of the State.

Historical: Laws 1899, 85, Sec. 7; re-enacting Laws 1893, 187, Sec. 7.

Supervision of County Superintendents and Schools.

Sec. 567. He shall have general supervision of the county superintendents and of the public schools of the State, and shall prepare and prescribe a course of study for use in all such public schools.

Historical: Laws 1899, 85, Sec. 8; re-enacting Laws 1893, 187, Sec. 8.

Preparation of Examination Questions.

Sec. 568. He shall prepare or cause to be prepared all examination

questions to be used by the county superintendents of the several counties of the State in the examination of applicants for teachers' certificates, and shall prescribe the rules and regulations for conducting all such examinations.

Historical: Laws 1899, 85, Sec. 9;
re-enacting Laws 1893, 187, Sec. 9.

Regulation of Teachers' Institutes.

Sec. 569. He shall prescribe rules and regulations for the holding of teachers' institutes, and, after consulting and advising with county superintendents, shall appoint assistant conductors therefor, when deemed necessary; and shall, as far as he shall find practicable, attend and assist at such institutes and aid and encourage, generally, teachers in qualifying themselves for their duties.

Historical: Laws 1899, 85, Sec. 10;
re-enacting Laws 1893, 187, Sec. 10.

Meetings With County Superintendents.

Sec. 570. He shall meet the county superintendents of each judicial district, or of two or more districts combined, at such time and place as he shall appoint, giving them due notice of such meeting. The object of such meeting shall be to accumulate facts relative to schools, to compare views, to discuss principles, to hear discussions and suggestions appertaining to the examination and qualification of teachers, methods of instruction, institutes and all other matters embraced in the public school system.

Historical: Laws 1899, 85, Sec. 11;
re-enacting Laws 1893, 187, Sec. 11.

General Duties.

Sec. 571. He shall prepare, have printed and furnished, through the county superintendents, to all officers charged with the administration of the laws relating to the public schools, and to teachers, such blank forms and books as are needed or required to be used in the discharge of their duties. He shall have the law relating to the public schools printed in pamphlet form and shall supply school officers, school libraries and State librarians with one copy each of such pamphlets; said printing to be paid for on the warrant of the Auditor out of the general fund, on bills approved by the State Board of Examiners, and he shall on or before the first day of December in every year preceding that in which shall be held a regular session of the Legislature, report to the Governor the condition of the public schools, the amount of State school fund apportioned and sources from which derived, with such suggestions and recommendations relating to the affairs of his office as he may think proper. It shall be his duty to visit annually such counties of the State as most need his person attendance, and all counties if practicable, for the purpose of inspecting the schools and awakening and guiding public sentiment in relation to the practical interests of education. He shall open such correspondence as may enable him to obtain all necessary information relating to the system of public schools in other States. All office, fuel, furniture, books, postage, stationery and other contingent ex-

penses pertaining to his office, shall be furnished in the same manner as those of the other departments of the State government.

Historical: Laws 1899, 85, Sec. 12;
re-enacting Laws 1893, 187, Sec. 12.
Omitting the provision relating to

traveling expenses, which is superseded
by Laws 1907, 465, Sec. 1. (Codes
Sec. 274.)

ARTICLE 3.

BOARD OF TEXT BOOK COMMISSIONERS.

Section	Section
572. Constitution of Board.	578. Publishers to keep books on hand.
573. Meetings: When and where held.	579. Requisition for books.
574. Advertisement for bids.	580. Same: Account of books ordered.
575. Adoption of text books: Independent school districts.	581. Custody and distribution of books.
576. Contracts for books: Bonds of publishers.	582. Reserve supply of books.
577. Publishers to furnish lists of books.	583. Expenses of Commissioners.

Note: So much of this article as relates to the 1907 meeting of the Text Book Commissioners, and the adoption of a list of text books by them for the ensuing six years, is now obsolete, but is retained here as it serves at least to explain the remainder of the article. Similar legislation is found in the earlier school laws. See Laws 1893, 187, Secs. 55-64; Laws 1899, 401.

Constitution of Board.

Sec. 572. It shall be the duty of the State board of Education of the State of Idaho to appoint a State Board of Text Book Commissioners, on or before the first day of April, 1907. Said board shall consist of seven members, one of whom shall be the State Superintendent of Public Instruction, who shall be ex-officio chairman of the said board, and two of whom shall be practical business men. Any resident of the State of Idaho who has had not less than five years experience as a teacher, and who, at the time of receiving and holding the appointment, shall be actually engaged in school work in the State of Idaho, shall be eligible for appointment to membership of said State Board of Text Book Commissioners as herein provided. The term of office of said board shall be six years, and the State board of Education of the State of Idaho is hereby empowered to fill any vacancy that may arise in said board. Said board shall have power to formulate rules for the government of its own proceedings, and three members shall constitute a quorum: *Provided*, That the restrictions relating to the eligibility for appointment to membership do not include the appointment of the two business men.

Historical: Laws 1907, 476, Sec. 1.

Meetings: When and Where Held.

Sec. 573. The said Board of Text Book Commissioners shall hold its first meeting at the State capitol in the Senate chamber on or before the fifteenth day of April, 1907, for the purpose of organization and the formation of terms of proposals and contracts for the furnishing of text books to the State of Idaho. The second meeting shall be held at the same place not later than the seventh day of June, 1907, for the purpose of selecting and adopting a uniform series of text books for use in all the public schools of the State, excepting

as hereinafter provided. Any and all subsequent meetings of said State Board of Text Book Commissioners shall be held at a time and place designated by the State Superintendent of Public Instruction, and said Superintendent of Public Instruction is hereby authorized to call any such meeting, provided that such subsequent meeting shall be called only in accordance with the formal written request of a majority of the members of the said State Board of Text Book Commissioners. Such formal request shall set forth the purpose for which such meetings shall be called.

Historical: Laws 1907, 476, Sec. 2.

Advertisement for Bids.

Sec. 574. Immediately following the first meeting of the State Board of Text Book Commissioners, the State Superintendent of Public Instruction shall, in accordance with the instructions of the said board, advertise for at least thirty days in two newspapers having a general circulation throughout the State, giving notice that the said State Board of Text Books Commissioners will meet as herein provided, and will consider said offers and proposals for supplying the schools of the State of Idaho with a uniform series of text books for use in all public schools of the State, excepting as hereinafter provided, in the following branches, to-wit:

- Spelling
- Arithmetic
- Physiology and Hygiene
- Reading
- Geography
- United States History
- Civil Government
- Writing
- Grammar

and in all other branches taught in common, graded and high schools of the State, as prescribed in the State Course of Study of the State of Idaho. Said proposals shall be in accordance with the form of proposal supplied by the State Board of Text Book Commissioners, and shall name the exchange price, net wholesale price f. o. b. cars at each publisher's address, and mailing price of single copies to districts or individuals: *Provided*, That the price so quoted on such books shall not exceed the lowest price quoted to any dealer, State county, township, school district or any other individual or corporation in the United States.

Historical: Laws 1907, 476, Sec. 3.

Adoption of Text Books: Independent School Districts.

Sec. 575. It shall be the duty of said State Board of Text Book Commissioners to meet at the time and place mentioned, and to carefully consider all proposals made to them in regular form for the furnishing of the said text books as hereinbefore provided, and said board shall select and adopt such text books for use in all the public schools as will, in their judgment, best subserve the interests and promote the progress of the public schools of the State. The series of text books so selected and adopted by the said State Board of Text

Book Commissioners shall be certified to by the chairman, and said certificate, with a copy of all books named therein, and the contracts for the same, shall be placed on file in the office of the State Superintendent of Public Instruction. Such certificate must contain a complete list of all books adopted by the said Board, giving the price for which each kind and grade of books will be furnished, and the name and address of the publisher agreeing to furnish the same. The said books named in said certificate shall, for a period of six years from and after the first day of September, 1907, be used in all the public schools in the State, to the exclusion of all others as texts: *Provided*, That in independent school districts in the State of Idaho, if it shall appear to the board of trustees of such independent school district or districts, that on account of special conditions existing in connection with the adopted course of study, or the special conditions of the school work and school environment, the adoption of one or more additional text books, or the adoption of some one or more text books differing from the generally adopted list as provided elsewhere in this article, shall be to the best interests of the educational work of such independent school district, then said board of trustees of such independent school district may, by presenting their claim, or by appearing in person or through an officially chosen representative, before the State Board of Text Book Commissioners, at a regularly called meeting, secure consideration of said claim for such special adoption, and may submit special information as may enable the State Board of Text Book Commissioners to reach a conclusion concerning the merits of said claim for special adoption; and the State Board of Text Book Commissioners is hereby authorized, if deemed advisable, to make such special adoption for such independent school district or districts: *Provided, further*, That in any and all such cases, the decision of the State Board of Text Book Commissioners as to such adoption shall be final, and that all text books adopted in accordance with such decisions shall be used by such independent school district for a period of six years from and after the first day of September, 1907, to the exclusion of all other school books as texts. It shall be the duty of the Superintendent of Public Instruction to enforce the use of said text books in all public schools of the State, and to withhold twenty-five per centum of the State school funds apportioned to any school district neglecting or refusing to introduce and use said books as hereinbefore provided.

Historical: Laws 1907, 476, Sec. 4.

Contracts for Books: Bond of Publishers.

Sec. 576. The said Board of Text Book Commissioners shall have power to make such contracts and agreements with the publishers as they shall deem necessary for the best interests of the public schools of the State, and shall require all publishers, contracting and agreeing to furnish books adopted by the said Commissioners, to furnish a good and satisfactory bond in the amount of not less than twenty-five hundred dollars, as a guarantee of the faithful performance of the conditions of the said contract.

Historical: Laws 1907, 476, Sec. 5.

Publishers to Furnish Lists of Books.

Sec. 577. It shall be the duty of book publishers furnishing books to the State of Idaho under this article, to have printed and to keep on hand at all times, free of charge, at the office of the county superintendent of public instruction in each county of the State of Idaho, a sufficient number of lists of the text books, adopted by the said Board, with the price of each of the said books as certified to in said certificate; and each county superintendent of public instruction shall immediately forward one such list to each trustee and to each teacher in his or her county.

Historical: Laws 1907, 476, Sec. 6.

Publishers to Keep Books on Hand.

Sec. 578. It shall be the duty of the book publishers furnishing books to the State of Idaho under this article, to keep the books they agree to furnish on hand at all times at their places of business, and at such places in the State of Idaho as is hereinafter provided.

Historical: Laws 1907, 476, Sec. 7.

Requisition for Books.

Sec. 579. Not later than the first Monday in August following the adoption, and at such times thereafter as may be necessary to properly supply the schools of said districts, the chairman of each of the boards of trustees of the schools of each county which supply free text books, shall forward to the county superintendent of his county a list of the kinds of books, and the number of each kind, which shall be required to supply the pupils of the schools of his district. Immediately upon receipt of this requisition from the chairman of the board of trustees, the county superintendent shall order, from the nearest depository furnishing said books, the books designated therein, and upon delivery of said books to the said trustee, the trustee shall cause to be issued, in regular form, payable to the dealer who furnishes the books, a warrant covering the value of said books as established by contract existing between said publishers and the State Board of Text Book Commissioners: *Provided*, That if from any cause the accounts are not paid within ninety days, the same shall draw interest at the rate of seven per centum per annum from the date of the shipment of the books to the date of the payment.

Historical: Laws 1907, 476, Sec. 8.

Same: Account of Books Ordered.

Sec. 580. The clerk of each school district which supplies free text books, and the county superintendent of public instruction, shall keep an account of all books ordered, showing the number of the district, the number of kinds of books, the date of the order, the place from whence ordered, the date and the amount if the remittance, and such other items as will, in their judgment, render the whole transaction easily understood.

Historical: Laws 1907, 476, Sec. 9.

Custody and Distribution of Books.

Sec. 581. The clerk of the board of trustees is hereby made the

custodian of the text books belonging to the district, and he shall, on the morning of the opening of the school, or prior thereto, count out the number of the books belonging to the district, noting carefully the condition of said books, and placing the same in the hands of the teacher, taking a receipt for the same, and at the end of the term of school the said clerk of the board of trustees shall receive the said books from the teacher, giving his receipt for them, and any missing or destroyed books shall be accounted for by the teacher: *Provided*, That the pupil shall be responsible, through his parent or guardian, to the district, if the responsibility is fixed upon said pupil; and *Provided, further*, That no one shall be responsible for the natural wear and tear of the books. In the interim of the sessions of the school, the clerk of the board of trustees shall safely keep the books and use due diligence in their preservation.

Historical: Laws 1907, 476, Sec. 10.

Reserve Supply of Books.

Sec. 582. It shall be the duty of the book publishers furnishing books to the State of Idaho under this article, to keep at all times on deposit at Boise, Pocatello, Lewiston and Coeur d' Alene, all in the State of Idaho, a sufficient number of the books they contract to furnish.

Historical: Laws 1907, 476, Sec. 11.

Expenses of Commissioners.

Sec. 583. The members of the said State Board of Text Book Commissioners shall each receive his actual and necessary expenses, including railway fare, while in the discharge of his official duties, including the time actually and necessarily consumed in going to and returning from the meeting of the Board. Such claim for expenses shall be accompanied by vouchers, and upon being presented to the Board in duplicate with vouchers attached, and being passed by the same, the vouchers shall be signed by the secretary of the Board, countersigned by the chairman and transferred to the State Auditor. The State Auditor shall present such vouchers to the State Board of Examiners, who, upon finding the same to be correct, shall issue warrants upon the proper fund. Said fund is the "Idaho State Text Book Commission Fund," of one thousand dollars, created and appropriated by the act of March 14, 1907.

Historical: Laws 1907, 476, Sec. 12. The concluding clause is taken from Section 13 of the act, which is otherwise omitted as being a specific ap-

propriation, but its effect is preserved by the exception to the repeal, contained in Section 17 of these Codes.

ARTICLE 4.

COUNTY SUPERINTENDENTS

- Section
- 584. Election, residence and term of office.
 - 585. Oath, bond and qualifications.
 - 586. Duties.
 - 587. Office and supplies: Office days.
 - 588. Repair of school property.
 - 589. Records.

- Section
- 590. Conduct of teachers' examinations.
 - 591. County teachers' certificates.
 - 592. Same: Grades of certificates.
 - 593. Certificates to normal and college graduates.

Section	Section
594. Certificates not to be granted to aliens.	598. Appointment of trustees for new district.
595. Revocation of teachers' certificates.	599. Expenses of conducting examinations.
596. Record of certificates.	600. Failure to report to State Superintendent: Penalty.
597. Annual report: Ascertainment of district boundaries.	

Note: The 1897 law referred to in the historical notes throughout this article was enacted to meet the requirements of the amendment to Const. Art. 18, Sec. 6, ratified November 3, 1906, which segregated the offices of county superintendent and probate judge, which had theretofore been filled by the same person. In other respects the 1897 law follows in a general way the school law of 1893 (Laws 1893, 131, Secs. 10-18).

Election, Residence and Term of Office.

Sec. 584. There shall be elected in each county in the State of Idaho, at the general election, a superintendent of public instruction, who shall reside at the county seat of the county in which he is elected, and who shall hold his office for a term of two years, from and after his taking charge of the same, and until his successor has been elected and qualified.

Historical: Laws 1899, 306, Sec. 1; re-enacting Laws 1897, 79, Sec. 1, omitting the first clause "at the next	ensuing general election," etc., and inserting "at the general election."
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Oath, Bond and Qualifications.

Sec. 585. Before entering upon the duties of his office the county superintendent of public instruction shall take and subscribe the oath prescribed by law, and execute a bond, payable to the State of Idaho, with two or more sureties to be approved by the board of county commissioners, in the penal sum of not less than two thousand dollars, conditioned upon the faithful performance of his official duties, and the delivery of all moneys and property received by him as such superintendent to his successor in office, which official bond, together with his official oath, shall be filed in the office of the county recorder, not later than the second Monday in January, next after election: *Provided*, that no person shall be eligible to the office of county superintendent of public instruction except a first grade practical teacher of not less than two years' experience in Idaho, one of which must have been while holding a valid first grade certificate issued by a county superintendent, and the holder of a first grade certificate at the time of his election or appointment, nor unless twenty-five years of age.

Historical: Laws 1897, 79, Sec. 2; re-enacted Laws 1899, 306, Sec. 2; amended Laws 1903, 284, Sec. 2, omitting redundant repetition of the requirement of filing the bond. The	concluding paragraph of the original section relating to a monthly meeting of teachers is transferred to the following section to which it seemed more germane.
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Duties.

Sec. 586. The county superintendent of public instruction shall have charge and oversight of the public schools of his county, and it shall be his duty to visit every public school in his county at least once during each term and remain at said public school at least one-half day; at such visits he shall carefully observe the methods employed by the teacher in giving instruction to the several branches

taught; the manner of discipline and government, the classification of the pupils, and general management of the school, and shall give the school such instruction and encouragement as he deems for the best interests of all concerned, and he shall make such suggestions to the teacher in private as, in his judgment, will render the said teacher more efficient, and promote the general educational interests of the district. It shall be his further duty to organize a monthly meeting of the teachers of the schools under his supervision, for the purpose of exchanging ideas of professional interest, for the study of methods and for general culture.

Historical: Laws 1899, 306, Sec. 3; re-enacting Laws 1897, 79, Sec. 3. The last clause is taken from Section 2 of the act as amended by Laws 1903, 284, Sec. 2, which otherwise constitutes the preceding section of these Codes.

Cross Reference: County superintendent to report to probate judge all

cases of truancy, delinquency and incorrigibility: Sec. 8336d. To pass on application for exemption of children from requirements of compulsory education: Sec. 8336. To furnish information for Commissioner of Immigration: Sec. 1420. To bring action against assessor for omitting names from poll tax book: Sec. 1858.

Office and Supplies: Office Days.

Sec. 587. The county commissioners shall furnish the county superintendent of public instruction an office in the county seat, and they shall furnish him with all necessary office furniture, including seal and blank books, stationery, postage, expressage, all blanks necessary for his office, and all blank books and blanks necessary for the use of the trustees and teachers in the discharge of their respective official duties within his county. The county superintendent of public instruction shall designate certain days in each month as his office days, which shall not be less than five in any month, and upon these days so designated by him, he shall keep his office open from nine o'clock a. m. until five o'clock p. m.

Historical: Laws 1899, 306, Sec. 4; re-enacting Laws 1897, 79, Sec. 4.

Repair of School Property.

Sec. 588. He may, in his discretion, require the trustees in any district to repair the school buildings or property, or to abate any nuisance in and about the premises, if such repair or abatement can be done for a sum not to exceed seventy-five dollars: *Provided*, There is a sufficient amount of money in the treasury to the credit of the district. He may also in all cases require the trustees to provide suitable outhouses; and in case the trustees fail to make such provision within a reasonable time, he may cause it to be done, and draw an order for a warrant, as hereinafter provided, upon the county auditor for said expenses, who shall draw his warrant payable out of any money to the credit of such district.

Historical: Laws 1899, 306, Sec. 5; re-enacting Laws 1897, 79, Sec. 5.

Records.

Sec. 589. He shall keep a complete record of all his official acts; preserve all blanks, maps, charts and apparatus, sent him as such officer, and file all papers, reports and statements from teachers and school boards; keep a register of all teachers employed in his county,

giving name of teacher, number of district, salary per month, grade of certificate and date of superintendent's visit. He shall obey the legal instructions of the State Superintendent.

Historical: Laws 1899, 306, Sec. 6;
re-enacting Laws 1897, 79, Sec. 6.

Conduct of Teachers' Examinations.

Sec. 590. He shall hold one regular public examination in each year for the purpose of examining all persons who may offer themselves as teachers in the public schools; said examination to be held in some suitable room at the county seat, and commencing on the fourth Thursday of August and continuing not to exceed three days. And for a like purpose the said county superintendent shall hold not to exceed three special examinations at such times and places as in his judgment the interests of the schools and teachers of the county shall require; *Provided*, That it shall be the duty of the county superintendent to give at least fifteen days notice of such regular and special public examinations in some newspaper published in the county.

Historical: Laws 1899, 306, Sec. 7;
re-enacting Laws 1897, 79, Sec. 7.

County Teachers' Certificates.

Sec. 591. The county superintendent shall grant certificates, in such form as the State Superintendent shall prescribe, to those persons only who shall have attained the age of eighteen years, who have attended the said public examination and shall be found to possess good moral character, thorough scholarship, and ability to govern and instruct the school; but no certificate shall be granted to any person, except to applicants for primary certificates, who shall not pass a satisfactory examination in orthography, reading, writing, grammar, arithmetic, geography, history of the United States, civil government, physiology and hygiene, with particular reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system, theory and practice of teaching, State Constitution and so much of the general school laws as relates to the duties and responsibilities of teaching. Said certificates shall be signed by the county superintendent and associate examiner or examiners, and no person shall be considered a qualified teacher within the meaning of the law, who has not a certificate granted by the said superintendent or other lawful authority: *Provided*, That all examination questions shall have been prepared as prescribed by law, furnished under the seal of the State Superintendent, and opened before the applicants for certificates on the day of examination: *Provided*, That first grade certificates shall be granted to all applicants who are otherwise qualified by law and who shall have passed in all the branches required in this section, and algebra, general history and rhetoric in addition thereto, with a general average of not less than ninety per cent, and with a minimum of not less than seventy-five per cent in any branch; and all applicants who are otherwise qualified according to law shall be granted second grade certificates, who shall have attained an average of eighty per cent and a minimum of not less than seventy per cent; and third grade certificates shall be granted to all applicants

who are otherwise qualified according to law, and who shall have attained a general average of seventy-five per cent and a minimum in any branch of not less than sixty per cent, but the holder of such shall be ineligible to another certificate of the same grade: *Provided*, That teachers holding valid second grade certificates with an average of ninety per cent or above may take the additional branches and receive a first grade certificate, and the county superintendent may renew first grade certificates at their expiration so long as the teacher is actually engaged in teaching: *Provided*, That primary certificates shall be granted, to be good only in primary departments of graded schools, which include the first four grades, and that examination for such certificates shall be upon questions prepared by the State Superintendent of Public Instruction: *Provided*, That each applicant for a teacher's certificate, under the provisions of this article, shall pay to the county superintendent the sum of one dollar, the same to be deposited by him in the county treasury to the credit of the institute fund, to be used in the institute work in addition to the regular appropriation.

Historical: Laws 1897, 79, Sec. 8; re-enacted Laws 1899, 306, Sec. 8; amended Laws 1901, 217, Sec. 1. The words "of the State Superintendent" after "seal" in the first proviso, are inserted on the authority of Sections 556, 558, ante, which require the State Superintendent to keep a seal and

authenticate his official acts, and further require him to prepare examination questions. They do not appear in the enrolled bill in which this section appears, but the words "under the seal" are meaningless without them.

Same: Grades of Certificates.

Sec. 592. The certificates issued by the county superintendent, subject to the rules and regulations prescribed by the State Superintendent, shall be of four grades, valid in the counties in which they are issued for the term hereinafter specified, unless sooner revoked:

1. First grade, five years from the date thereof.
2. Second grade, three years from the date thereof.
3. Primary grade, four years from the date thereof.

4. Third grade, one year from the date thereof: *Provided*, That first grade, second grade and primary grade certificates shall be good in any county in the State for the same period, by the holder thereof filing a certified copy of the same with the county superintendent in the county in which he desires to teach.

Historical: Laws 1897, 79, Sec. 9; re-enacted Laws 1899, 306, Sec. 9, amended Laws 1901, 217, Sec. 2.

Certificates to Normal and College Graduates.

Sec. 593. The State Board of Education shall have power to authorize the county superintendents to issue teachers' certificates to graduates of State Normal Schools, and to graduates of any chartered college or university having the right to grant degrees: *Provided*, That applicants for certificates under the provisions of this section shall have been successfully engaged in teaching not less than twenty-seven months, and shall present to the State Board of Education a certificate of graduation from a State Normal School, or a literary degree from a chartered college or university. The State Board of Education, or the county superintendents, may revoke any certificate

issued under the provisions of this section whenever the holder of such certificate shall prove himself incapable of teaching successfully in any public school in the State of Idaho.

Historical: Laws 1907, 255, Secs. 1, 2.

Certificates Not to Be Granted to Aliens.

Sec. 594. No certificate shall be granted or teacher employed in any of the public schools of this State to any person not a citizen of the United States.

Historical: Laws 1899, 306, Sec. 17;
re-enacting Laws 1897, 79, Sec. 17.

Revocation of Teachers' Certificates.

Sec. 595. The county superintendent of public instruction shall have power to revoke any teacher's certificate, other than those granted by the State Superintendent, for neglect of duty, for incompetency to instruct and govern a school, for immorality or for any cause or disqualification which would have been sufficient ground for refusing to issue the same, had the cause existed or been known at the time of its issue: *Provided*, That no certificate shall be revoked or annulled without a personal hearing, unless the holder thereof shall, after reasonable notice, neglect or refuse to appear before the superintendent for that purpose.

Historical: Laws 1899, 306, Sec. 10;
re-enacting Laws 1897, 79, Sec. 10.

Record of Certificates.

Sec. 596. He shall keep a record of all certificates granted or revoked, showing to whom issued, age of grantee, date of issue, grade and duration of each certificate, and if revoked, the date and reason therefor.

Historical: Laws 1899, 306, Sec. 11;
re-enacting Laws 1897, 79, Sec. 11.

Annual Report: Ascertainment of District Boundaries.

Sec. 597. He shall, on or before the first day of October in each year, make and transmit an annual report to the State Superintendent for the school year ending August 31st, next preceding, which report shall contain an abstract of all reports made to him by the district clerks of the several districts of the county, together with such statistics, items and statements, relative to the schools of the county, as may be required and prescribed by the State Superintendent. Such reports shall be made upon, and conform to, the blanks furnished by the State Superintendent for that purpose. He shall inquire and ascertain whether the boundaries of the school districts in his county are definitely and plainly described in the records of the clerk of the board of county commissioners, and keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall report such fact to the board of county commissioners at their regular meeting in July, and such board shall immediately take such steps as are necessary to change, harmonize and clearly define them. The county

superintendent, if he deem it necessary for the guidance of school census marshals, may order the description of the district boundaries printed in pamphlet form, to be paid out of current expense fund of the county.

Historical: Laws 1899, 306, Sec. 12;
re-enacting Laws 1897, 79, Sec. 12.

Appointment of Trustees for New District.

Sec. 598. The county superintendent shall appoint trustees for all newly organized school districts, who shall serve until the next regular election, and shall fill all vacancies that may occur in the board of trustees by reason of death, resignation or otherwise, and such appointment shall hold until the next regular election.

Historical: Laws 1899, 306, Sec. 13;
re-enacting Laws 1897, 79, Sec. 13.

Expenses of Conducting Examinations.

Sec. 599. The county superintendent shall be allowed all necessary expenses incurred in the examination of teachers, for blanks, books, stationery, pens, ink, and assistants, not to exceed two in number, who shall receive as compensation four dollars per day, such expenses to be paid out of the current expense fund of the county.

Historical: Laws 1897, 79, Sec. 14;
re-enacted Laws 1899, 306, Sec. 14;
amended Laws 1907, 323, Sec. 1.

Failure to Report to State Superintendent: Penalty.

Sec. 600. If the county superintendent fails to make a full and correct report to the State Superintendent of Public Instruction of all statements required by law to be made, he forfeits the sum of one hundred dollars from any moneys due him from the county, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid upon information from the State Superintendent of Public Instruction, that such reports have not been made.

Historical: Laws 1899, 306, Sec. 16;
re-enacting Laws 1897, 79, Sec. 16.

ARTICLE 5.
SCHOOL FUNDS AND FINANCES.

Section	Section
601. Public school fund.	608. Auditor to draw school warrants.
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603. County school taxes.	610. Same: Superintendent to countersign orders.
604. Distribution of school moneys.	611. Same: Issuance of warrant.
605. Apportionment by county superintendent.	612. Same: Presentment for payment.
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Public School Fund.

Sec. 601. The public school fund of the State shall consist of the proceeds of such lands as have hitherto been granted, or may hereafter be granted, to the State by the general government known as

“school lands” and those granted in lieu of such. Lands acquired by gift or grant from any person or corporation under any law or grant, and of all other grants of land or money made to the State for general educational purposes, and all moneys accruing to the State from the estates of deceased persons.

Historical: Laws 1899, 85, Sec. 27; re-enacting Laws 1893, 187, Sec. 27.

Cross Reference: What constitutes school fund: Const. Art. 9, Sec. 4. Funds to remain intact: ib. Sec. 4. Investment of funds: ib. Sec. 11. Items payable to fund: License money: Sec. 1837. Moneys of intestate dying without heirs: Sec. 5702. Money received from forest reserve: Sec. 122. School money withheld from non-complying districts: Sec. 606. Proceeds of property not claimed by succession: Sec. 5717. Pro-

ceeds of sale of estrays: Sec. 1299. Proceeds of sale of floating timber: Sec. 871. Proceeds of sale of firearms taken from Indians: Sec. 7218. Proceeds of sale of property of lapsed district: Sec. 620. Proceeds of sale of roving stallions: Sec. 1287. Proceeds of sale of trespassing animals: Sec. 1297. Unclaimed bank deposits: Sec. 2997.

For fines and forfeitures payable into school fund see cross reference note to Sec. 603.

Additional School Lands.

Sec. 602. All lands, title to which is acquired by the State by foreclosure or otherwise, on loans of school funds, and all lands which escheat to the State by virtue of Section 5717 of these Codes or otherwise, shall be held and treated as school lands, and may be sold and disposed of in the same manner. Said lands shall be under the charge and control of the State Land Board.

Historical: Laws 1899, 443, Secs. 1, 2.

County School Taxes.

Sec. 603. For the purpose of establishing and maintaining public schools in the several counties of the State the board of county commissioners of each county shall, at the time of levying the taxes for State and county purposes, levy a tax of not less than five mills nor more than ten mills on each dollar of taxable property, in their respective counties, for school purposes. Said taxes must be assessed and collected in each county as other taxes for State and county purposes. For the further support of the public schools there shall be set apart by the county treasurer of each county and placed in the county school fund all moneys arising from fines, forfeitures or breaches of any of the public penal laws of the State.

Historical: Laws 1899, 85, Sec. 28; re-enacting Laws 1893, 187, Sec. 28.

Cross Reference: Fines and forfeitures payable into school fund: In general: Sec. 8440. Fine against assessor for omitting names from poll tax book: Sec. 1858. Fine against county attorney for neglect to sue assessor: Sec. 1817. Fines assessed against mine owner: Sec. 205; against officers failing to make reports: Sec. 281; against officers violating provisions governing sale of pamphlet publications: Sec. 343b; against railroads for failing to

keep hides of animals killed: Sec. 2820; against recorder for failure to properly record instruments: Sec. 2074, against Indians carrying arms: Sec. 7217; for neglect of assessor: Sec. 1815; for neglect to deliver water: Sec. 7149; for failure to send children to school: Sec. 637; for permitting stallions to run at large: Sec. 1285; for usury: Sec. 1540; for violation of optometry law: Sec. 1382 under marriage license law: Sec. 2639; under Sunday rest law: Sec. 6828.

Distribution of School Moneys.

Sec. 604. The income of the State school fund and taxes collected by the State for the support of the public schools which shall be re-

ceived up to the first day of January and the first day of July of each year, shall be distributed semi-annually during said months respectively in each year among the several counties of the State from which reports have been received by the State Superintendent of Public Instruction, as provided in this chapter, in proportion to the number of children of school age, as shown by the last school census list of each county, and the Superintendent of Public Instruction shall certify such apportionment to the State Auditor, and upon such certificate the Auditor shall draw his warrant in favor of the county treasurer of each county, for the amount due such county. The Superintendent shall also certify to the treasurer and superintendent of each county the amount apportioned to each county.

Historical: Laws 1899, 85, Sec. 29;
re-enacting Laws 1893, 187, Sec. 29.

Cross Reference: Reports to State
Superintendent: Sec. 597.

Apportionment by County Superintendent.

Sec. 605. The county superintendent shall require of the county treasurer quarterly each year, a report of the amount of money on hand to the credit of the school fund of each county, not already apportioned, and the county treasurer shall furnish such report when so required. The county superintendent, upon receiving such report, shall proceed to apportion the public school moneys, both county and State, reported by the county treasurer to be in the county treasury, among the several school districts in the following manner, to-wit: One-third of the whole amount he shall divide equally among the several districts that have complied with the provisions of this chapter. The remaining two-thirds of said whole amount he shall apportion per capita among the several districts in proportion to the number of children in each district, as shown by the last report of the census marshal of each district, and credit each district with the amount to which the apportionment entitles it: *Provided*, That each district is entitled to one share in the apportionment of the first one-third, regardless of the number of children therein. Immediately after such apportionment he shall certify to the county treasurer the amounts which are to be placed to the credit of each district and notify the clerk of each district of the amount placed to the credit of his district.

Historical: Laws 1899, 306, Sec. 15;
re-enacting Laws 1897, 79, Sec. 15.

Accounts of Treasurer With School Districts.

Sec. 606. It is hereby made the duty of the county treasurer of each county to keep a separate account with each school district in the county; to place to the credit of each the amount of money certified to by the county superintendent, as provided in this chapter, and to pay over the money on legally drawn warrants or orders of the district officers entitled to draw the same: *Provided*, That it shall be the duty of the county superintendent whenever any board of trustees fails to fully comply with the provisions of this chapter, or any subsequent act, to notify the county treasurer in writing that there has been a failure upon the part of such board of trustees to comply with the law. Whereupon it shall be the duty of the county treasurer to withhold all moneys apportioned to the district governed by said board of trustees, until he shall have received notice from

the county superintendent that the board governing said district has fully complied with the law. All moneys that shall be finally forfeited by any district shall be put into the general school fund of the county and be apportioned as other moneys. And it shall be the duty of said treasurer to receive and hold, as special deposits, all moneys belonging to the public school fund of his county, in accordance with the provisions of this chapter, and to pay them over only on warrants of the county auditor: *Provided, further,* That the said county treasurer shall pay over to the treasurer of any independent school district organized under the provisions of this chapter, all moneys belonging to such district, upon the presentation of an order from the clerk of the board of trustees of such district, signed also by the chairman thereof, and countersigned by the county superintendent and county auditor.

Historical: Laws 1893, 187, Sec. 31; | enacted Laws 1899, 85, Sec. 31;
amended Laws 1897, 11, Sec. 1; re- | amended Laws 1901, 217, Sec. 8.

Duties of County Superintendent.

Sec. 607. It shall be the duty of the county superintendent in each county to keep a separate account with each school district in his county; to place to the credit of each district the amount apportioned by him as provided for in this article; to countersign all legally drawn warrants and orders of the district officers entitled to draw the same; to enter the same upon his books in proper form, giving date, number of such warrant or order, to whom drawn, for what purpose, and the amount of the same. And further, it shall be the duty of the county superintendent to collect, by process of law, all penal fines not paid over by the justice of the peace, or other officers required by law to pay the same into the county treasury; and the same may be collected and recovered by action at law, in which the State of Idaho, by the county superintendent, is plaintiff and the officer neglecting or refusing to pay over said moneys is defendant.

Historical: Laws 1899, 85, Sec. 32;
re-enacting Laws 1893, 187, Sec. 32.

Auditor to Draw School Warrants.

Sec. 608. It shall be the duty of the county auditor, upon the presentation of any order from the clerk of the board of trustees of any school district in his county (said order also being signed by the chairman of the said board of trustees, or, in his absence, by the other members of the board), to draw his warrant upon the school fund standing to the credit of the said district in favor of the person mentioned in the said order: *Provided,* That in case of independent school district orders, he shall not draw his warrant, but countersign the warrant or order of said district officers: *Provided, further,* That the said orders have been countersigned by the county superintendent, but in no case shall he issue a warrant, or countersign an order, for a greater amount than there is cash in the treasury to the credit of said district, except as provided in the four following sections.

Historical: Laws 1899, 85, Sec. 33; | in the four following sections," is in-
re-enacting Laws 1893, 187, Sec. 33; | serted to harmonize this section with
amended Laws 1897, 11, Sec. 2. The | Laws 1905, 93, contained in said sec-
concluding clause, "except as provided | tions.

Deficiency Warrants.

Sec. 609. The trustees of any school district may issue orders for warrants for the payment of teachers for their services in teaching, and for other necessary expenses connected with the school, whether or not there is any money in the treasury to the credit of the district issuing such orders for warrants: *Provided*, That the total amount of such orders for warrants shall not exceed the income and revenue for such district for such year: *Provided, further*, That the total amount of such orders for warrants shall not exceed ninety-five per cent of the income and revenue for such district for such year, until such income and revenue has been paid into the treasury to the credit of the district issuing such orders for warrants.

Historical: Laws 1905, 93, Sec. 1.

Same: Superintendent to Countersign Orders.

Sec. 610. It shall be the duty of the county superintendent of the county in which such orders for warrants are issued to countersign all such legally drawn orders for warrants when presented to him for his signature.

Historical: Laws 1905, 93, Sec. 2.

Same: Issuance of Warrant.

Sec. 611. On the presentation of an order for a warrant properly countersigned by the county superintendent, the county auditor shall issue a county warrant for the same as provided by law.

Historical: Laws 1905, 93, Sec. 3.

Same: Presentment for Payment.

Sec. 612. The person holding such warrant issued by the county auditor may present the same to the county treasurer for payment. And if there is not money in the treasury to the credit of the said district on which the warrant is drawn to pay such warrant the treasurer shall indorse on the back of said warrant, "Not paid for want of funds." Warrants so indorsed by the county treasurer shall draw interest at the rate of seven per cent per annum from the date of indorsement until paid.

Historical: Laws 1905, 93, Sec. 4.
This section contains no provision for registration of the warrant, but all

warrants are required to be registered, when drawn, by Section 2056.

Investment of Surplus Moneys.

Sec. 613. Whenever there shall have accumulated in the hands of the treasurer of any school district in the State, moneys belonging to said school district to an amount in excess of the amount which, in the opinion of the school district board of said district, shall be necessary for the necessary current expenses of maintaining the schools in said district, the same shall be invested by said board in United States bonds, State bonds, State warrants or county warrants, when the market value thereof is not below par. And said board shall deposit said securities in some safe deposit, and they shall there be kept until it shall become necessary to convert the same into money for school district purposes, to be determined by said board.

Historical: Laws 1899, 85, Sec. 86;
re-enacting Laws 1890-91, 186, Sec. 1.

ARTICLE 6.

SCHOOL DISTRICTS.

Section

614. School districts are corporations.

615. New districts and changes in boundaries.

616. Notice of proposed changes.

Section

617. Action on petition.

618. Joint districts: How formed.

619. Apportionment for new districts.

620. Lapsed districts.

School Districts Are Corporations.

Sec. 614. Each regularly organized school district in this State is hereby declared to be a body corporate by the name and style of "School District Number in the County of, State of Idaho"; and in that name the trustees may sue and be sued, hold and convey property for the use and benefit of such district, and make contracts the same as municipal corporations in this State.

Historical: Laws 1899, 85, Sec. 34; re-enacting Laws 1893, 187, Sec. 34.

Sufficiency of Contract: A contract between a teacher and a school district wherein E. is designated as the party of the first part, and "the board of trustees of school district No. 8," etc., is designated as the party of the second part, and the contract is signed by E. and the individual members of the school board whose names are

followed by the further description: "The board of trustees of School District No. 8, in and for the County of Shoshone, State of Idaho," is a sufficient compliance with this section to constitute such agreement, the contract of the school district and enforceable as such. *Ewin v. Independent School District No. 8* (1904) 10 Ida. 102; 77 Pac. 222.

New Districts and Changes in Boundaries.

Sec. 615. The board of county commissioners of the several counties of the State shall have power to create new districts from organized territory or from old districts, to change the boundaries of any district heretofore established, or to attach to one or more districts the territory included within the boundaries of any district which shall lapse by reason of failure to comply with the provisions of this chapter: *Provided*, That no district shall be formed from any territory, nor the boundaries of any district be changed, at any other time than at the regular April meetings of the board; nor at any time unless a petition for such new district or the change of boundaries is filed in the office of the county superintendent on or before the fifteenth day of the month preceding: *Provided, further*, That in no instance shall the changing of the boundaries of any organized district take effect until after the close of school in that district for that school year. If such petition is for a new district, it must set forth the boundaries of the new district asked for, and must be signed by the parents or guardians of at least ten children of school age who are residents of the proposed new district, and, if for a change of boundaries, such petition must set forth the change of the boundaries desired, and the reason for the same, and must be signed by at least two-thirds of those who are heads of families and residents of the district or districts whose boundaries are in question: *Provided, further*, That two or more districts lying contiguous, may, upon petition of a majority of the heads of families residing in each of the said districts, be united to constitute one district: *Provided, also*, That no district shall be divided for the purpose of forming a new district unless it contains an area of more than nine square miles, except on the approval of the county superintendent of schools and

by the unanimous vote of the board of county commissioners, nor shall a new district be divided if, by so doing, the remainder of the district shall be found to contain less than fifteen persons of school age; nor shall incorporated cities or towns hereafter be divided into two or more districts: *Provided, further,* That when it shall appear that a pupil living in one district cannot attend school in his or her own district because of the distance of the school house, or for any other valid reason, such pupil may attend the school in any district in the county in which his or her own district is situated, upon making the proper application to the county superintendent, which official shall be the judge of the necessity for making such change, and that district shall receive, for such pupil's tuition from such pupil's district, such an amount as the said pupil would be accredited with in his or her own district.

Historical: Laws 1893, 187, Sec. 35;	amended Laws 1901, 217, Sec. 5;
amended Laws 1895, 156, Sec. 1; re-	amended Laws 1905, 218, Sec. 1;
enacted Laws 1899, 85, Sec. 35;	amended Laws 1907, 16, Sec. 1.

Notice of Proposed Changes.

Sec. 616. It shall be the duty of the county superintendent, upon receipt of any petition as herein provided for, to immediately give notice to all parties interested, by sending notice by registered mail to each of the trustees of the district to be affected by such change or changes; and by causing printed notices to be posted in at least three public places in the districts so affected, one of which shall be on the door of the school house in said district, for at least one week. Such notice must state the change or changes to be made in said district, that the said petition is on file in the office of the county superintendent, and that the same will be presented to the board of county commissioners at its next regular meeting for final action. The superintendent must transmit the said petition to the said board with his approval or disapproval, and, if he approve the same, he may note such changes in boundaries as in his judgment shall be for the best interests of all parties concerned.

Historical: Laws 1899, 85, Sec. 36;
re-enacting Laws 1893, 187, Sec. 36;
amended Laws 1895, 156, Sec. 2.

Action on Petition.

Sec. 617. The board of county commissioners must, at its next regular meeting, act upon the same. If such petition be granted it may be in accordance with the original prayer or with such modifications as the board may choose to make.

Historical: Laws 1899, 85, Sec. 37;	board" inserted for "it" in the last line
re-enacting Laws 1893, 187, Sec. 37;	to express the sense.
amended Laws 1895, 156, Sec. 3. "The	

Joint Districts: How Formed.

Sec. 618. A joint school district may be formed from territory belonging to two or more contiguous counties. For the purpose of organizing a joint district the same preliminary steps must be taken and the same course be pursued, as is pursued in the organization of other districts, as provided in Sections 615 and 616. Such district shall be designated as "Joint District No. of the Counties

of," and be so numbered that it shall have the same number in all the counties from which it was formed. The petition required by Section 615 shall be made to each county superintendent interested: *Provided*, That the school census, the record of attendance at school, the assessing of property, the collection of taxes, and all acts which, from their nature, shall be separately kept, shall be kept and done, and the report thereof made, as if each portion of said joint district were an entire district in the respective counties. The teacher of such joint district shall not be required to hold a certificate in both counties.

Historical: Laws 1899, 85, Sec. 38;
re-enacting Laws 1893, 187, Sec. 38.

Apportionment for New Districts.

Sec. 619. All new districts formed of unorganized territory shall be entitled to their just proportion of school moneys at the next apportionment and the county superintendent shall place the same to the credit of such district: *Provided*, That in no case shall such district be entitled to use the same unless school has actually been commenced therein, and six months shall not have elapsed since the date of its organization: *Provided, further*, If any new district is organized from any part of any other organized district or districts, as provided in this chapter, the county superintendent, after having ascertained the amount of moneys belonging to said old district or districts and deducting said indebtedness and liabilities, must apportion to said new district its due per capita proportion of money or indebtedness, as the case may be, from said districts from which it may be formed. And in case of joint districts the county superintendent must apportion to such district such proportion of the school money to which such district is entitled, as the number of school children residing in that portion of the district situated in his county bears to the whole number of school census children in the whole district.

Historical: Laws 1899, 85, Sec. 39;
re-enacting Laws 1893, 187, Sec. 139.

Lapsed Districts.

Sec. 620. If any school district shall, for the period of one year, fail to maintain a school for at least four school months, or keep up its organization of officers as, is required by law, or if there has been an average attendance for three consecutive months of only five pupils or less, such district shall lapse, and the money in the treasury of the county belonging thereto shall be apportioned by the county superintendent among the other districts in the same manner as other moneys are apportioned. The property of any school district that shall lapse shall be sold by the county superintendent in such manner as he shall deem best. The proceeds of such sale, after the payment of any indebtedness of said district, shall be placed to the credit of the general school fund. The territory included within the boundaries of the said school district shall, by order of the county commissioners, be attached to one or more school districts. The board of trustees shall, if necessary, levy a special tax upon all property in the district, which when added to moneys apportioned by the county superinten-

dent of schools, will be sufficient to provide funds for the maintenance of the school for five months in the year. The taxes so levied are and shall be a lien upon property taxed, the same as other taxes, and shall be collected in the same manner.

Historical: Laws 1893, 187, Sec. 40;
re-enacted Laws 1899, 85, Sec. 40;
amended Laws 1901, 217, Sec. 4.

ARTICLE 7.

DISTRICT TRUSTEES.

Section	Section
621. Constitution of board of trustees.	625. General duties of trustees.
622. Election of trustees: Voting special taxes.	626. Trustees must qualify: To provide flag.
623. Assessment and collection of tax.	627. Attendance of non-resident pupils.
624. Regular meetings of board.	628. Report of trustees.

Constitution of Board of Trustees.

Sec. 621. The board of trustees of each school district consists of three members, one of whom shall be elected at each regular school election, for the term of three years, so that but one trustee shall retire in any year. Immediately after their election, they must elect from their number a chairman and a clerk.

Historical: Laws 1899, 85, Sec. 41; re-enacting Laws 1893, 187, Sec. 41. Re-written so as to omit the provision	for the first election "following the passage of this (the original) act."
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Election of Trustees: Voting Special Taxes.

Sec. 622. The regular election for electing members of the board of school trustees shall be held annually in each district on the first Monday in June, at which time it shall be lawful to transact any business pertaining to schools and school interests. The clerk of said board of trustees shall cause printed or written notices to be posted, specifying the time and place of holding such election and the time during which the ballot box shall be kept open not less, however, than three hours, and further specifying at what hour other business shall be transacted. Said notices shall be posted in three public places in the district, one of which shall be the school house, if there be one, at least ten days previous to such time of election. If the clerk fail to give such notice, then any two legal voters residing in the district may give such notice over their own names, and such election may be held after the day fixed in this section, for such election. All elections shall be by ballot; the polls shall be opened by one of the board of trustees, or by any qualified elector if no trustee be present at the time specified in the notice. If no time is specified in the notice, then the polls shall be opened at one o'clock p. m. and closed at five o'clock p. m. of the same day. Said election shall be conducted as any other county elections, except that one judge and one clerk may constitute a board of election, and any trustee may administer the oath to said judge and clerk. Said judge and clerk shall make return of such election to the county superintendent immediately, which return shall be filed in the office of the county superintendent: *Provided, further,* That it shall be

lawful at such annual meeting and election on said first Monday in June, to vote upon the question of whether or not any special tax shall be levied for any purpose, such as building or repairing school houses, or for the support of public schools in the district. Said meeting may first decide the rate to be levied, not to exceed fifteen mills on the dollar of taxable property, then proceed to ballot, on which ballot shall be written or printed, "Tax Yes" or "Tax No", and none but actual resident freeholders or heads of families of said districts shall vote at such election. A separate ballot box shall be used for voting on any question of taxation or other business concerning schools and school interests from that used in voting for trustees. If a majority of the votes polled at such election are in favor of a tax, the board of trustees must immediately make such levy and certify the fact, the date thereof and the rate of tax levied, the year for which levied, and the number of the district, to the clerk of the board of county commissioners and the county assessor, but not more than one such special tax can be levied in any one year.

Historical: Laws 1893, 187, Sec. 42; re-enacted Laws 1899, 85, Sec. 42; amended Laws 1901, 217, Sec. 7; amended Laws 1903, 430, Sec. 1. A purported amendment is found on page 343 of Laws 1907. Such amendment, however, omitted, doubtless through inadvertence, the provision authorizing school districts to levy special taxes. This oversight was of such a serious nature as to induce the Commissioner to critically examine the 1907 law and as a result of such examination, together with the advice of the Attorney General's office, to omit

the 1907 amendment as unconstitutional on the ground of insufficiency of title, thus leaving the 1903 amendment in force. The title to the 1907 amendment is obviously defective in that it does not properly indicate the section proposed to be amended, and while as a rule the Commissioner has not attempted to pass independently on the constitutionality of the various sections of the Codes, the defect in this case is so obvious, and the consequences of retaining the obnoxious amendment so grave, as to require a departure from the usual rule.

Assessment and Collection of Tax.

Sec. 623. Upon receiving such statement from the trustees of any school district the assessor must assess upon all property in the district subject to taxation the tax so levied and certified to him as aforesaid; but for that purpose he is not required to take new statements from the owners of property, but his assessment of all special taxes so levied may be computed and made upon the valuation of property as fixed by the board of equalization for State and county purposes, and as appears upon the assessment roll in the same year; said special taxes so levied as aforesaid shall become a lien upon the property so assessed from the date of assessment, and shall be due and payable at the same time as State and county taxes, and in all respects are to be collected in the same way, except that the assessor must keep a separate list or assessment roll thereof, and when paid must be named in his receipt to the taxpayer as a separate item, and he must pay them to the county treasurer as he pays other taxes; but at the time of payment he must specify to the treasurer what taxes they are, and take a separate receipt therefor and keep separate accounts thereof. The board of county commissioners shall furnish the assessor with such blanks as are needed to comply with the provisions hereof. The provisions of this and the preceding sections for the levy and collection of taxes shall not apply to independent districts now established, which have special laws for the collection of school taxes.

Historical: Laws 1899, 85, Sec. 43;
re-enacting Laws 1893, 187, Sec. 43.
Omitting the clause allowing the as-

essor a commission for collecting the
tax which is repealed by Laws 1899,
405, placing county officers on salaries

Regular Meetings of Board.

Sec. 624. The regular meetings of the board of trustees shall be held on the last Saturday of March, June, September and December. The board may, however, hold other special or adjourned meetings, as they may from time to time determine.

Historical: Laws 1899, 85, Sec. 44;
re-enacting Laws 1893, 187, Sec. 44.

General Duties of Trustees.

Sec. 625. It shall be the duty of the trustees of each district to employ teachers on written contract, but before such contract can be legally signed it shall be the duty of the teacher to exhibit his or her certificate to the board of trustees, and it shall be the duty of the trustees to file a copy of such contract with the county superintendent; to fix, allow and order paid the salaries and compensation of such teachers, and to discharge the same; to fix the compensation of the clerk of the board, and to determine the rate of tuition of non-resident pupils: *Provided*, That any pupil or pupils of the eighth grade or of high school qualifications of any district, shall be eligible to attend any high school within his county without paying tuition, but the county superintendent shall transfer from the district to which said pupil or pupils belong, to the district holding the high school attended, a sum of money bearing the same proportion to the amount of money received by the district during the year, as said pupil or pupils bear to the total school census of the district in which said pupil or pupils belong. The trustees shall have power to discharge any teacher for neglect of duty, or for any cause that, in their opinion, renders the services of such teacher unprofitable to the district; but no teacher shall be discharged before the end of his or her term without a reasonable hearing. The trustees may not contract to compel teachers to make up time while attending any annual county or joint institute. Any two of such trustees shall constitute a quorum for the transaction of business.

The trustees shall have charge of all school property in their district and shall have the power to receive in trust all real estate or other property conveyed to said school district; and to convey by deed, duly executed and delivered, all the estate or interest of their district in any school house or site directed to be sold by vote of their district. All conveyances made to said board must be made in their corporate name, to-wit: "To trustees of School District No. County State of Idaho." Said trustees have further power, when directed by a vote of their district, to build or remove school houses, to purchase, receive, hold and convey real and personal property for school purposes, and to hold, purchase and repair school houses and to supply the same with necessary furniture and to fix the location of school houses: *Provided*, That a school house already built shall not be removed, nor a new site for a school house be designated, except when directed by a two-thirds vote of the electors of said district at an election held for that purpose, which election may be a special or general school election: *Provided*, That no

trustee shall be pecuniarily interested in any contract made by the board of trustees, of which he is a member, and any contract made in violation of this section is null and void.

The trustees of the respective districts must furnish all things, not herein provided for, necessary for the comfort and use of their district, such as janitor service, fuel, improvements, maps and apparatus, and library, and for such purpose may audit and allow accounts against the school fund of their district, not to exceed twenty-five per cent of the amount of such school fund in any one year.

At least three per cent of the moneys annually appropriated to any district shall be applied by the trustees for the maintenance of a school library, selections of books for which shall be made from a list of books furnished to each district and compiled by the State Board of Education. The board of trustees shall keep the library in a suitable case at the school house; shall keep a list of all books in the library; loan the books to pupils and patrons within the district for a period not to exceed four weeks at any one time; hold patrons, parents or guardians to strict accountability for books loaned, requiring them to replace the same in event of loss, or spoilation; report to the county superintendent the number of books purchased during the year, the number of books lost and other information required by the county superintendent, and for the further good of the library shall make all needed rules and regulations: *Provided further*, That the trustees shall not draw an order for a warrant in excess of the amount to the credit of the district at the time the order is given.

It shall be the duty of the clerk of the board of trustees of each district to keep a record of the transactions of his district in a book furnished by the county superintendent, the form of which shall be prescribed by the State Superintendent; said record so kept must show all the data and information required in said books to be shown by the forms thereof; and the trustees of each district must make a full report in writing annually, on the first day of September, to the county superintendent of their county, on blanks furnished, which shall be exact copies of the pages of the book herein required to be kept, together with such matters pertaining to schools as may be required of them by the State Superintendent.

It is the duty of the trustees of the respective districts, on receiving a report from any teacher of the disorderly conduct of any pupil, to decide how said insubordinate pupil shall be punished, or whether he or she shall be dismissed from school, and the teacher must enforce the decision so made.

The clerk of the board of trustees must, on the first Tuesday of September of each year, proceed to enumerate the children of school age in his district, and he must not enumerate any except bona fide residents thereof, and the board of trustees must cause a true and certified copy of said census to be transmitted to the county superintendent. School age, as herein used, is defined as applying to all persons between the ages of six and twenty-one years. For said services said clerk shall be allowed, as full compensation therefor, five cents for each child so enumerated, and the chairman of the board of trustees shall draw his order upon the county auditor, which

must be countersigned by at least one other member of the board of said district, for the amount so allowed, and it must be charged against and paid out of the fund of said district.

Historical: Laws 1893, 187, Sec. 45; re-enacted Laws 1899, 85, Sec. 45; amended Laws 1901, 217, Sec. 6; amended Laws 1903, 285, Sec. 1; amended Laws 1907, 341, Sec. 1.

Cross Reference: Establishment of and tax for libraries: Sec. 676. Trustees to provide fire escapes for school buildings over two stories in height: Sec. 1552. To report to the county superintendent all cases of truancy, delinquency and incorrigibility: Sec. 8336d.

Removal of Teacher: Before a

teacher of an ordinary school district can be removed by the trustees, he must be given notice and an opportunity to be heard in his defense *Ewin v. Independent School District No. 8* (1904) 10 Ida. 102; 77 Pac. 222.

Prohibited Contracts: A School trustee is pecuniarily interested in a contract whereby his wife is employed by the board of trustees to teach the school, and such contract is null and void. *Nuckols v. Lyle* (1902) 8 Ida. 589; 70 Pac. 401.

Trustees Must Qualify: To Provide Flag.

Sec. 626. Trustees must qualify within fifteen days after receiving notice of their election by taking the official oath, which oath may be administered by either of the other trustees or retiring trustee, and such oath shall be subscribed and filed in the office of the county superintendent.

It shall be the duty of the trustees of every school district in the State of Idaho to cause to be erected, and to keep in repair, upon all public school houses, or within the school house grounds surrounding such public school building, which may be in their respective school district, a good and sufficient flag staff or pole, together with all necessary adjustments, and they shall provide a United States flag of not less than four by eight feet in size, which shall be floated from such flag staff or pole during the school hours of such days as the trustees and teacher may determine: *Provided*, That the flag shall not be hoisted on any school building during any day when a violent storm or inclement weather would destroy or materially injure such flag. The flag used by any and all such school districts, as provided for in this section, shall be paid for out of the current expense fund of said district. The flags for use of public school buildings are hereby declared to be necessary supplies and are to be so paid for out of the aforesaid fund. Any person or persons who shall wilfully injure, deface, or destroy any flag, flag staff or pole, or adjustment attached thereto, erected and arranged for the purpose of carrying out the requirements of this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than five dollars, nor more than fifteen dollars.

Historical: Laws 1893, 187, Sec. 46; re-enacted Laws 1899, 85, Sec. 46; amended Laws 1903, 285, Sec. 2.

Attendance of Non-Resident Pupils.

Sec. 627. Trustees may determine whether pupils outside of their counties may attend school within their districts and upon what terms.

Historical: Laws 1893, 187, Sec. 66; re-enacted Laws 1899, 85, Sec. 66; amended Laws 1907, 16, Sec. 2.

Report of Trustees.

Sec. 628. It is the duty of the board of school trustees to make a report in writing, on the first Monday in June, of the financial condition of their respective school districts, showing the amount of money received, from what source, the amount expended, and in what manner and for what purposes expended, and the amount of money in the treasury of the district, or to the credit of the district on hand at the date of the report, the said report to fully show the financial condition of the district at the date thereof. It is hereby made the duty of the board of school trustees of each district to cause the said report to be published in a newspaper, or posted in three conspicuous places in the district, and to retain a copy of the said report in the office of the clerk of the school board of said district, where the same may be at all times open to examination and inspection by any person.

Historical: Laws 1905, 319, Secs. 1, 2.

ARTICLE 8.

TEACHERS.

Section

629. Register and report of teachers.

630. General duties of teachers: Suspension of pupils.

Section

631. Teacher must have certificate.

Register and Report of Teachers,

Sec. 629. Teachers of the public schools must be furnished with a school register by the trustees of the district, for the purpose of registering the names of their pupils, and their daily attendance at schools, and at the close of the term said register must be delivered to the clerk of the board of trustees of the district. The teacher must also be furnished with a blank report by said trustees, which report said teacher must fill up according to the heading of the same, and transmit it to the county superintendent of the county at the close of the term,, and no teacher shall be allowed an order in excess of ninety per cent of his or her salary until said report is so made out and transmitted.

Historical: Laws 1899, 85, Sec. 47;
re-enacting Laws 1893, 187, Sec. 47;
amended Laws 1895, 31, Sec. 1.

General Duties of Teachers: Suspension of Pupils.

Sec. 630. Every teacher in the public schools may suspend, for good cause, any pupil, and report such suspension to the board of trustees for review. If the action of the teacher is sustained by the board, the pupil may be censured and returned to the school or expelled from school, as in the judgment of the board seems proper; but if not sustained, the teacher may appeal to the county superintendent, whose decision shall be final.

Every teacher shall make reports, in addition to those mentioned elsewhere in this chapter, which may be required by the State Superintendent, county superintendent, or by the school district board of trustees; shall use the text books provided for the schools of the

State; enforce the course of study and the rules and regulations prescribed by the State Superintendent; hold pupils to a strict account for disorderly conduct or improper language in or about the building, on the play grounds, and on the way to and from school; shall keep himself or herself above reproach, and endeavor to impress upon the minds of the pupils the principles of truth, justice, morality, patriotism and refinement, and to avoid idleness, falsehood, profanity, vulgarity, and intemperance; give attention during every school term to the cultivation of manners, and shall, if there be a library in the school, devote not less than one hour in each week to systematically reviewing the works contained therein.

Historical: Laws 1893, 187, Sec. 48; | amended Laws 1899, 337, Sec. 1;
re-enacted Laws 1899, 85, Sec. 48; | amended Laws 1901, 215, Sec. 1.

Teacher Must Have Certificate.

Sec. 631. No teacher shall be entitled to, or receive, any compensation for the time he or she teaches in any public school without a certificate valid or in force for such time in the county where such school is taught, except that if a teacher's certificate shall expire by its own limitation within six weeks of the close of the term, such teacher may finish such term without re-examination or renewal of his or her certificate.

Historical: Laws 1899, 85, Sec. 49;
re-enacting Laws 1893, 187, Sec. 49.

ARTICLE 9.

COMPULSORY EDUCATION.

Section	Section
632. Compulsory attendance on district schools.	635. Refusal to comply with demand.
633. Same: At government free schools.	636. Same: Penalty.
634. Demand for attendance of children.	637. Same: Disposition of fine.

Note: The sections of this article from 633 to 637 inclusive, relating to compulsory attendance at government free schools, were enacted in 1901 with particular reference to a school established by the government on the then Lemhi Indian Reservation, which has since been abandoned. Consequently those sections have no present value or effect, but in view of their general language and theoretical application to any school complying with the conditions therein named, the Commissioner felt that he had no authority to omit them. It should be remembered, however, that the compulsory school law as practically administered is found in the first section of this article, and in Sec. 8336 of the Penal Code, and not in these Secs. 633 to 637.

Compulsory Attendance on District Schools.

Sec. 632. Every parent, guardian or other person in the State of Idaho, having control of a child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school for a period of twelve weeks in each school year, at least eight weeks of which shall be consecutive, unless such child or children are excused from such attendance by the board of school trustees of the school district in which such parents or guardians reside, upon it being shown to their satisfaction that the bodily or mental condition of such children has been such as to prevent his, her or their attendance at school, or application at study for the period

required, or that such child or children are taught in a private school or at home, in such branches as are usually taught in a primary school, or have already acquired the ordinary branches of learning taught in the public schools: *Provided*, In case a public school shall not be taught for a period of twelve weeks, during the year, within three miles by the nearest traveled road of the residence of any such parent or guardian within the school district, he or she shall not be liable to the provisions of this article.

First. It shall be the duty of the board of school trustees of each district in this State, on or before the first Monday in September in each year, to furnish the principal in each public school in such district with a list of all the children in the school district between the ages of eight and fourteen years, said list to be taken from the report of the school census marshal. Any board of trustees failing to comply with this provision shall be liable to a fine of not less than five dollars nor more than ten dollars for a first offense, and not less than ten dollars nor more than thirty dollars for a second offense.

At the beginning of each school month thereafter it shall be the duty of the principal of each school in such district to report, to the board of trustees and to the county superintendent, the names of all children between the ages of eight and fourteen who failed to attend school during the previous school month. It shall be the duty of the county superintendent to refuse to countersign the teachers' warrants until such reports are made as herein provided. When it shall appear, at the expiration of three school months, to the board of trustees, that any parent, guardian or other person having charge or control of any child or children, shall have failed to comply with the provisions of this section, the board shall cause demand to be made upon such parent, guardian or other person, for the amount of the penalty hereinafter provided, and if such parent, guardian or other person shall neglect or refuse to pay the same within five days after the making of such demand, the board shall commence proceedings in the name of the school district for the recovery of the fine hereinafter provided, before any court having jurisdiction: *Provided*, That nothing in this subdivision shall apply to any child or children, who are actually and necessarily compelled to labor for the support of a parent or parents.

Second. Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of this section, shall be liable to a fine of not less than five dollars, nor more than twenty-five dollars, for the first offense, nor less than ten dollars nor more than fifty dollars for the second and each subsequent offense, besides the cost of collection.

Third. All fines collected under the provisions of this section shall be paid into the county treasury, the same to be placed to the credit of the school district collecting the same.

Fourth. The board of school trustees in each district shall cause to be posted annually, in three public places in the district, notices of the requirements and penalties of this law.

Historical: Laws 1899, 85, Sec. 50, re-enacting Laws 1893, 187, Sec. 50; subdivision first amended Laws 1903, 295, Sec. 3.

Cross Reference: Legislature may require attendance at school for a time equivalent to three years between the ages of six and eighteen:

Const. Art. 9, Sec. 9. Provisions of the delinquent child law relative to | compulsory attendance of children on schools: Sec. 8336.

Same: At Government Free Schools.

Sec. 633. Whenever the Government of the United States or the State of Idaho shall erect, or cause to be erected and maintained, a school for general educational purposes within the State of Idaho, and the expense of the tuition, lodging, food and clothing of the pupils therein is borne by the United States or the State of Idaho, it shall be compulsory on the part of every parent, guardian or other person in the State of Idaho having control of a child or children between the ages of five and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months in each year, or during school for a period of nine months in each year, or during the annual term, unless such child or children is or are excused from such attendance by the principal or superintendent of said school, upon it being shown to the satisfaction of said principal or superintendent that the bodily or mental condition of such child or children has been and is such as to prevent his, her or their attendance at school, or application at study for the period required, or that such child or children is or are taught in the public schools, private school, or other school or at home, in such branches as are usually taught in public schools: *Provided*, That in case the Government of the United States or the State of Idaho does not make provision for free transportation of said child or children to and from their homes to said school, then he, she or they shall not be liable to the provisions of this section, unless they reside less than ten miles from such school.

Historical: Laws 1901, 85, Sec. 1.

Demand for Attendance of Children.

Sec. 634. It shall be the duty of all principals or superintendents of the school or schools mentioned in Section 633, before attempting to enforce the provisions of this article hereinafter mentioned, to serve, or cause to be served, a demand for the attendance of certain children, naming them, and also designating the school to which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend said school over which he has charge, and a copy of this article; and such parent, guardian or other person having charge of said child or children shall have ten days to either deliver said child or children at said school or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child will not admit of attendance.

Historical: Laws 1901, 85, Sec. 2.

Refusal to Comply With Demand.

Sec. 635. If, at the expiration of ten days after such notice or demand, the parents, guardian or other person having charge of said child or children, shall have failed or refused to comply with this article, the principal or superintendent shall cause a demand to be made upon such parent, guardian or other person, for the amount of the penalty hereinafter provided; and if such parent, guardian or

person shall neglect or refuse to pay the same within five days after making said demand, the superintendent or principal shall commence proceedings in the name of the State for the recovery of the fine hereinafter provided, before any court having jurisdiction: *Provided*, That nothing in this article shall apply to any child or children who is or are actually and necessarily compelled to labor for the support of such parent.

Historical: Laws 1901, 85, Sec. 3.

Same: Penalty.

Sec. 636. Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of the three preceding sections, shall be liable to a fine of not less than five dollars nor more than twenty-five dollars for the first offense, or less than ten dollars nor more than fifty dollars for the second offense and each subsequent offense, beside the cost of collection.

Historical: Laws 1901, 85, Sec. 4.

Same: Disposition of Fine.

Sec. 637. All fines collected under the provisions of the preceding section shall be paid into the county treasury, the same to be placed to the credit of the general school fund.

Historical: Laws 1901, 85, Sec. 5.

ARTICLE 10.

TEACHERS' INSTITUTES.

Section.

638. County superintendent to hold institute.

639. Teachers must attend institute.

641. Conduct and expenses of institute.

Section.

640. Teachers of adjourned schools to draw pay.

County Superintendent to Hold Institute.

Sec. 638. The county superintendent of each county in this State must hold annually a teachers' institute at such time as he may designate, and such institute must continue in session not less than five nor more than fifteen days. He must give at least ten days' notice of the time and place of holding such institute by publication in some newspaper published in the county, or by a written notice to each qualified teacher in the county: *Provided*, That two or more adjoining counties may unite in holding a joint institute under the joint supervision of the county superintendents of such counties.

Historical: Laws 1893, 187, Sec. 51;
re-enacted Laws 1899, 85, Sec. 51;
amended Laws 1899, 439, Sec. 1.

Teachers Must Attend Institute.

Sec. 639. It is the duty of all teachers engaged in the county and of all persons holding certificates, to attend such institute and participate in the exercises thereof, and all teachers who may have charge of schools at the time of holding the annual institute must adjourn

their schools for the time during which the institute is held: *Provided*, That when joint institutes are held in accordance with the provisions of the preceding section, it shall be the duty of all teachers in said counties and of all persons holding certificates therein, to attend such joint institute.

Historical: Laws 1893, 187, Sec. 52;
re-enacted Laws 1899, 85, Sec. 52;
amended Laws 1899, 439, Sec. 1.

Teachers of Adjourned Schools to Draw Pay.

Sec. 640. All teachers who may adjourn school for the purpose of attending any annual county or joint institute must be allowed the same pay while in actual attendance, as when teaching, and the county superintendent must certify to the number of days attendance of each teacher, and the trustees of the several districts must count them as so many days lawfully employed.

Historical: Laws 1893, 187, Sec. 53;
re-enacted Laws 1899, 85, Sec. 53;
amended Laws 1899, 439, Sec. 1.

Conduct and Expenses of Institute.

Sec. 641. The county superintendent shall procure the services of one or more competent persons to assist in conducting said institute; he must also provide a building, lights, stationery, janitor service, and all things necessary for the holding of the institute; and must present an itemized account of such expenses, not to exceed one hundred and fifty dollars exclusive of the amount received from fees of applicants for teachers' certificates, to the auditor of his county, and the county auditor shall issue a warrant in favor of the county superintendent equal to the amount of such expenses: *Provided*, In case joint institutes are held as provided in Section 638, the county superintendents of the counties holding such institutes shall each present an itemized account of such expenses as aforesaid to the auditor of his county, and the expenses thereof shall be borne equally by such counties, and the county auditor shall issue a warrant in favor of the county superintendent for the part chargeable against such county.

Historical: Laws 1893, 187, Sec. 54;
re-enacted Laws 1899, 85, Sec. 54;
amended Laws 1899, 439, Sec. 1.

ARTICLE 11.

SCHOOL DISTRICT BONDS.

Section	Section
642. Calling bond elections.	647. Redemption of bonds.
643. Election Issuance and registration of bonds.	648. Payment of interest on bonds.
644. Sale of bonds.	649. Bonds to be printed.
645. Liability of school district.	650. Neglect to pay over money a felony.
646. Tax levy to pay bond: Investment of sinking fund.	

Calling Bond Elections.

Sec. 642. The board of school trustees of any school district may, whenever a majority so decides, submit to the qualified voters of the

State of Idaho who are resident freeholders or householders of the district, and their wives, the question whether the board be authorized to issue coupon bonds to a certain amount, not to exceed eight per centum of the taxable property in said district, and bearing a rate of interest not exceeding six per centum per annum, and payable and redeemable at a certain time, for the purpose of building or providing one or more school houses in said district, with all necessary furniture, desks, blackboards, globes, charts, outline maps, etc. And the board of school trustees of any school district which has issued bonds for any of the purposes enumerated in this section, may submit to the electors of such district the question whether the board shall be authorized to issue coupon bonds to refund or take up any of the bonded indebtedness of such district, at a rate of interest not exceeding six per centum per annum.

Historical: Laws 1893, 187, Sec. 69;
re-enacted Laws 1899, 85, Sec. 69;
amended Laws 1901, 12, Sec. 1;
amended Laws 1903, 344, Sec. 1.

Cited: Ewin v. Independent School
District No. 8 (1904) 10 Ida. 102; 77
Pac. 222.

Election: Issuance and Registration of Bonds.

Sec. 643. Such elections must be held in the manner prescribed for elections in this chapter. The ballots must contain the words "Bonds Yes" or "Bonds No." If two-thirds of the votes cast at such election are "Bonds Yes," the board of trustees must issue such bonds in such form as the board may direct; they must bear the signature of the chairman of the board of trustees, and be countersigned by the clerk of the school district, and the coupons attached to the bonds must be signed by said chairman and said clerk; and each bond so issued must be registered by the county treasurer in a book provided for that purpose, which must show the number and amount of each bond and the person to whom the same is issued, and the said bonds must be sold by the said school trustees as hereinafter provided.

Historical: Laws 1899, 85, Sec. 70;
re-enacting Laws 1893, 187, Sec. 70.

Sale of Bonds.

Sec. 644. The school trustees must give notice in some newspaper published in the State, for a period of not less than four weeks, to the effect that said school trustees will sell said bonds, briefly describing the same, and stating the time when, and the place where said sale will take place: *Provided*, That the said bonds must not be sold for less than their par value, and the trustees are authorized to reject any bids and to sell said bonds at private sale, if they deem it for the best interest of the district, and all moneys arising from the sale of said bonds must be paid forthwith into the treasury of the county in which said district may be located, to the credit of said district, and the same are immediately available for any of the purposes authorized by this chapter.

Historical: Laws 1899, 85, Sec. 71;
re-enacting Laws 1893, 187, Sec. 71.

Liability of School District.

Sec. 645. The faith of each school district is solemnly pledged for

the payment of the interest and the redemption of the principle of all bonds, which are issued under this article. And for the purpose of enforcing the provisions of this article, each school district is a body corporate, and may sue and be sued by or in the name of the board of school trustees of said district.

Historical: Laws 1899, 85, Sec. 72;
re-enacting Laws 1893, 187, Sec. 72.

Tax Levy to Pay Bonds: Investment of Sinking Fund.

Sec. 646. The school trustees of each district must ascertain and levy annually the tax necessary to pay the interest as it becomes due and a sinking fund to redeem the bonds at their maturity, and said tax is a lien upon the property of said school district, and must be collected in the same manner as other taxes for school purposes: *Provided*, That the said sinking fund may, at the discretion of the board, be loaned on first mortgage or improved farm lands, but no loan shall exceed one-third of the market value of the land, exclusive of the improvements thereon, given as security for such loans. The annual interest on all loans herein provided for shall be seven per cent. Said sinking fund may be invested in United States bonds, State bonds, county bonds, county or State warrants, when the market value thereof is not below par, at the discretion of said board.

Historical: Laws 1899, 85, Sec. 73;
re-enacting Laws 1893, 187, Sec. 73.
"Said sinking fund" inserted before

"may be invested" to express the sense of the section.

Redemption of Bonds.

Sec. 647. When the sum in the sinking fund equals or exceeds the amount of any bond then due, the county treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the number thereof; and preference must be given to the oldest issue; and if, at the expiration of the said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon must cease; but the treasurer shall, at all times thereafter, be ready to redeem the same on presentation, and when any bonds are so purchased or redeemed, the county treasurer must cancel the same by writing across the face of each bond, in red ink, the word "Redeemed," and date of such redemption.

Historical: Laws 1899, 85, Sec. 74;
re-enacting Laws 1893, 187, Sec. 74.

Payment of Interest on Bonds.

Sec. 648. The county treasurer must pay out of any moneys belonging to a school district, the interest upon any bonds issued under this article by such school district when the same becomes due, upon the presentation, at his office, of the proper coupon, which must show the amount due and the number of the bond to which it belonged; and all coupons so paid must be reported to the school trustees at the first meeting thereafter.

Historical: Laws 1899, 85, Sec. 75;
re-enacting Laws 1893, 187, Sec. 75.

Bonds to Be Printed.

Sec. 649. The school trustees of any district must cause to be printed or lithographed at the lowest rates, suitable bonds, with the coupons attached, when the same becomes necessary, and pay therefor out of any moneys in the county treasury to the credit of the school district.

Historical: Laws 1899, 85, Sec. 76;
re-enacting Laws 1893, 187, Sec. 76.

Neglect to Pay Over Money a Felony.

Sec. 650. If any of the school trustees fraudulently fail or refuse to pay, into the property county treasury, the money arising from the sale of any bonds provided for by this article, they are guilty of a felony.

Historical: Laws 1899, 65, Sec. 77;
re-enacting Laws 1893, 187, Sec. 77.

ARTICLE 12.

INDEPENDENT SCHOOL DISTRICTS.

Section.	Section.
651. Organization of districts.	657. Meetings of board.
652. Corporate powers.	658. Duties and powers of trustees.
652. Board of trustees.	659. Issuance of funding bonds.
654. Election of trustees.	660. Original bond elections.
655. Prohibition against contracts with trustees.	661. Tax levy for payment of bonds.
656. Qualification and organization of board.	662. Application of school law.

Organization of Districts.

Sec. 651. Whenever any school district within this State, as defined by the board of county commissioners, has within its limits taxable property of the amount of one hundred and fifty thousand dollars or over, as shown by the last assessment roll for the county, it may be organized into an independent school district upon a vote of one-fifth or over of those within the district who are qualified to vote at school elections, petitioning the said board for the establishing of such district as an independent school district; and if a greater number of such qualified voters do not remonstrate against such establishment, the board must clearly, by its order of record, define the boundaries of such district, if not already done, and within one month order that the question of so establishing such independent school district must be submitted to a vote of all the electors of the district, who, under the provisions of this chapter, are authorized to vote for the levy of taxes and issue of bonds, and must make the necessary arrangements for such election, giving at least twenty days notice thereof, and the time and place of holding the same. If a majority of those so voting, vote in favor of so organizing such independent district, said board must make its order of record and declare such district established, and designate it as the "Independent School District (state name and number of district), in _____ County, Idaho."

Historical: Laws 1899, 85, Sec. 78;
re-enacting Laws 1893, 187, Sec. 78;
amended Laws 1897, 96, Sec. 1.

Corporate Powers.

Sec. 652. The district so established is constituted a body corporate, and succeeds to the title of all property rights and privileges, and assumes and must discharge and pay all debts, obligations and duties, belonging to or devolving upon the old district or districts of which it is so formed and established, and by its corporate name it may:

1. Make contracts, sue and be sued;
2. Take, hold and convey such real and personal property only as is needed for actual school purposes;
3. Have a corporate seal;
4. Choose such officers as are herein provided for.

Historical: Laws 1899, 85, Sec. 79;
re-enacting Laws 1893, 187, Sec. 79.

Board of Trustees.

Sec. 653. The officers of such district shall consist of a board of trustees, composed of six qualified electors who are resident free holders within the district. The first board of trustees must be appointed by the board of county commissioners immediately after the district is so established, and shall hold their offices for terms as follows, to-wit: Two until the next school election under the provisions hereof; two for one and two for two years after such election, and until their successors are elected and qualified. Said board so appointing must designate the term of each trustee so appointed.

Historical: Laws 1893, 187, Sec. 80;
re-enacted Laws 1899, 85, Sec. 80;
amended Laws 1903, 335.

Election of Trustees.

Sec. 654. There must be an election for two members of the board of trustees, to be held on the first Tuesday of September following the establishment of such district, and annually thereafter an election must be held to elect two trustees. The clerk of the board must give at least ten days' notice of the time and place of such election, by publication in a newspaper, or by three posted notices in the district, and at all elections under this article voters must have the same qualifications prescribed by this title for school elections. At such elections any person offering to vote may be challenged and required to take all oaths required for voters at the general elections in this State, and on refusing to take such oaths must not be allowed to vote. The board of trustees may appoint for all such elections two judges and one clerk. Voting must be by ballot, and if, upon counting the ballots, there is a tie, and three qualified persons have the highest and an equal number of votes, the board of trustees must select two from the three, and when there is a failure to elect by reason of a tie vote, the board of trustees must select.

If any trustee dies, removes from the district or ceases to have the qualifications for such office, or for any cause his office is vacant, or he neglects or refuses to act, or without excuse ceases to attend the meetings of the board for four successive regular meetings thereof, his office thereby becomes vacant and a majority of said board of

trustees may appoint another qualified person to fill his unexpired term.

Historical: Laws 1893, 187, Sec. 81; | amended Laws 1903, 335; amended
re-enacted Laws 1899, 85, Sec. 81; | Laws 1907, 316.

Prohibition Against Contracts With Trustees.

Sec. 655. No trustee must be interested in any contract let, or made by, or with the board, or with any officer thereof, or in any supplies furnished to or for said district, or a surety for the performance of any contract with said board or district, or the agent or partner of any contractor with said board or district; and no action can be maintained or recovery had against said board or district, upon any contract or obligation in which any trustee is so interested, but the same is void.

Historical: Laws 1893, 187, Sec. 82; | part of section; the remainder com-
re-enacted Laws 1899, 85, Sec. 82; | prises the following section of these
amended Laws 1905, 71; Sec. 1. First | Codes.

Qualification and Organization of Board.

Sec. 656. Each trustee must, before entering upon the duties of his office, take and subscribe the official oath, which must be filed with the county school superintendent. Immediately after the appointment of such trustees by the board of county commissioners, as above provided, and after each biennial election, the trustees, or a majority thereof, must meet at the school house and organize as a board, and from their number must select a chairman, a clerk and a treasurer, or they may elect as treasurer some competent and responsible person who is not a trustee. Said trustees of independent school districts may provide pay or compensation for the clerk, but no other school officer whatever must receive any pay or compensation for his time or services or in any way be allowed to make any pecuniary profit or gain by reason of his office, and any school officer or person who has the custody in any way of any school funds must give bonds, with at least two good sureties, in double the amount of funds likely at any time to be in his custody.

Historical: Laws 1893, 187, Sec. 82; | part of section; the first part is con-
re-enacted Laws 1899, 85, Sec. 82; | tained in the preceding section.
amended Laws 1905, 71, Sec. 1. Last

Meetings of Board.

Sec. 657. Regular meetings of the board of trustees must be held on the second Monday of each month, and special meetings may be called by the chairman of the board, or by any two trustees, by personal notice of the time and place of such meetings to each member of the board, or, if he cannot be found, by leaving such notice at his place of residence, with some person of suitable age and discretion. Four trustees constitute a quorum for the transaction of any business, but a less number may adjourn any regular meeting from time to time, until a quorum can be obtained; but no meeting of the board, not provided for by the rules or by law, is legal unless all the members thereof have been notified as provided for in this section.

Historical: Laws 1899, 85, Sec. 83;
re-enacting Laws 1893, 187, Sec. 83.

Duties and Powers of Trustees.

Sec. 658. The board of trustees of said district shall have power, and it is their duty:

1. To make such by-laws for their own government and for the government of the schools of the district as they may deem expedient, not inconsistent with the provisions of this chapter;
2. To employ or discharge teachers, mechanics and laborers, and to fix, allow and order paid their salaries and compensation, and to determine the rates of tuition for non-resident pupils;
3. To levy a special tax if necessary, which, when added to moneys apportioned by the county superintendent of schools, will be sufficient to provide funds for the maintenance of the schools for nine months in each year; the special taxes levied by said board of trustees for the payment of interest on bonds and sinking fund, for payment of bonds at maturity, together with the levy for the maintenance of schools, shall not exceed twenty mills on the dollar;
4. To provide furniture, fixtures and apparatus, and everything needed in the school house or for the use of the board;
5. To rent, repair and insure school houses and property and preserve the same for the benefit of the schools of the district;
6. To build or remove school houses and buildings and to purchase or sell school lots;
7. To expel pupils from school who refuse to obey the rules thereof, and to exclude from school children under six years of age;
8. To determine the number and qualifications of teachers who shall be employed and the length of time the school shall be kept, to fix the time for opening or closing of schools, and for the dismissal of primary pupils before the regular time of closing schools;
9. To require pupils to be furnished with proper and suitable books as a condition of membership in the schools;
10. To exclude from the schools and school libraries of said district all books, papers and catechisms of a sectarian nature;
11. To require teachers to conform to the laws and regulations of the board;
12. To protect the morals and health of the pupils while at school.

Historical: Laws 1893, 187, Sec. 84; re-enacted Laws 1899, 85, Sec. 84; amended Laws 1903, 430, Sec. 2; amended Laws 1907, 304, Sec. 1.

Removal of Teacher: The trustees of an independent school district, unlike those of an ordinary school dis-

trict, have unlimited power to dismiss a teacher either with or without notice, and the exercise of that power is not subject to review or control by the courts. *Ewin v. Independent School District No. 8* (1904) 10 Ida. 102; 77 Pac. 222.

Issuance of Funding Bonds.

Sec. 659. The board of trustees of any independent school district, organized under any general or special law, may issue negotiable coupon bonds of their district for the purpose of paying, redeeming or refunding the principal of any of the outstanding bonded indebtedness of their district, whenever the same can be done to the profit or advantage of their district and without the district incurring any additional indebtedness or liability exceeding in any year the income or revenue provided for such year. Said bonds must bear interest at not exceeding six per centum per annum, payable semi-annually,

at the office of the treasurer of the district, or at such banking house in the City of New York as may be designated by the board of trustees; and the principal of said bonds, or any part thereof, may at the option of the district, be paid at any time after ten years, and must be paid within twenty years from the time they are issued, and in the order in which they are issued and numbered. Semi-annual interest coupons, covering the interest to grow due, must be attached to each bond; the bonds must be signed by the presiding officer of the board and attested by its secretary and the seal of the district, if it have a seal, and the coupons must be signed, and the bonds registered by the treasurer of the board. No bond shall be sold at less than its par value, and the proceeds thereof must be devoted to the payment, redemption or refunding of the outstanding bonded indebtedness of the district.

Historical: Laws 1899, 84, Sec. 1; re-enacting Laws 1890-91, 129, Sec. 737.

Not Repealed: The act to establish a system of free schools, approved March 6, 1891, which repeals Title 3 of the Revised Statutes covering the

same subject, does not repeal that other act approved March 6, 1891, authorizing independent school districts to issue bonds. *Barton v. Moscow, etc., School District* (1892) 3 Ida. 270; 29 Pac. 43.

Original Bond Elections.

Sec. 660. The board of trustees of any such independent district may, whenever two-thirds of the board so decide, submit to the qualified electors of the district, at an election to be held for that purpose, and to be called and conducted as other school elections in said district, the question whether the board shall be authorized to issue the negotiable coupon bonds of the district in an amount to be mentioned in the notice of election, for the purposes of providing and improving school houses and grounds and furniture, apparatus, and fixtures for said district, or for any or either of said purposes; and if at such election two-thirds of the qualified electors of said district voting at said election assent thereto, the board of trustees may issue such bonds of the district to the amount and for the purpose designated in said notice; which bonds shall be in all respects similar to, and shall be signed, negotiated, registered, bear interest, and be made payable as, the bonds provided for in the last preceding section; and no bond shall be sold for less than its par value, and the proceeds thereof must be devoted to the purposes mentioned in said notice.

Historical: Laws 1899, 84, Sec. 1; re-enacting Laws 1890-91, 129, Sec. 738.

Tax Levy for Payment of Bonds.

Sec. 661. The board of trustees of any such district that has issued bonds under either of the last two preceding sections must annually levy upon all the taxable property of the district, in addition to other authorized taxes, a tax sufficient to pay the interest on all bonds so issued as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time the bonds are issued; which taxes shall be levied, assessed, collected and paid over as other taxes are levied, assessed, collected and paid over in the district, and shall be devoted to the payment of the princi-

pal and interest of said bonds only; and the accumulated sinking fund may be used for the redemption of said bonds at any time after ten years from the date of their issue.

Historical: Laws 1899, 84, Sec. 1;
re-enacting Laws 1890-91, 129, Sec.
739.

Application of School Law.

Sec. 662. All the provisions of this chapter providing for a public school system wherein not contradictory to or inconsistent with the provisions of this article, and which may be made applicable to the objects thereof, are adopted as a part of the law governing the establishment and management of independent school districts.

Historical: Laws 1899, 85, Sec. 85;
re-enacting Laws 1893, 187, Sec. 85.

ARTICLE 13.
PREVENTION OF DISEASE.

Section	Section
663. Notice to trustee of infectious disease.	665. Disinfection of text books.
664. Exclusion of pupils from infected households.	666. Violation of article a misdemeanor.

Notice to Trustees of Infectious Disease.

Sec. 663. The owner, or agent of the owner, or a house in which a person resides who has the small-pox, diphtheria, scarlet fever or any other contagious or infectious disease, dangerous to the public health, and the physician called to attend the person or persons so affected shall, within twenty-four hours after becoming cognizant of the fact, give notice thereof to the clerk of the board of trustees of the school district in which said person so afflicted resides, and said person so afflicted shall be kept away and apart from all other persons except those whose presence may be necessary to the physical or spiritual well being of such person or persons.

Historical: Laws 1899, 451, Sec. 1. Cross Reference: Persons residing in quarantined houses are to be ex-	cluded from school: Sec. 1104. Schools may be closed during prevalence of epidemic: Sec. 1107.
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Exclusion of Pupils From Infected Households.

Sec. 664. The school trustees of the various school districts in the State shall not allow any pupil to attend the public schools while any member of the household to which such pupil belongs is sick of small-pox, diphtheria, scarlet fever or other contagious or infectious disease, dangerous to the public health, or during the period of two weeks after the death, recovery, or removal of such sick person; and any pupil coming from such household shall be required to present, to the teacher of the school the pupil desires to attend, a certificate from the attending physician of the facts necessary to entitle him to admission in accordance with the above regulations.

Historical: Laws 1899, 451, Sec. 2.

Disinfection of Text Books.

Sec. 665. Whenever any text book or books, belonging to any

school district, shall be in any house during the time that pupils residing in such house are prevented from attending the public school in accordance with the provisions of this article, such book or books shall not be returned to such public school until the same shall have been thoroughly disinfected under the direction of the attending physician, who shall certify the same to the teacher of said school, or to the clerk of the board of trustees in case the school is not in session at such time.

Historical: Laws 1899, 451, Sec. 3.

Violation of Article a Misdemeanor.

Sec. 666. Any school trustee or other person violating any of the provisions of this article shall be deemed guilty of a misdemeanor.

Historical: Laws 1899, 451, Sec. 4.

ARTICLE 14.

MISCELLANEOUS PROVISIONS.

Section

- 667. School year and month defined.
- 668. Sectarian and partisan instruction forbidden.

Section

- 669. Eighth grade examinations.
- 670. Arbor day.
- 671. Establishment of kindergartens.

School Year and Month Defined.

Sec. 667. The school year within this State shall commence on the first Monday in September in each year. A school month is four weeks, of five school days.

Historical: Laws 1899, 85, Sec. 67;
re-enacting Laws 1893, 187, Sec. 67.

Sectarian and Partisan Instruction Forbidden.

Sec. 668. No books, papers, tracts or documents of a political, sectarian or denominational character must be used or introduced in any school established under the provisions of this chapter, and any and every political, sectarian or denominational doctrine is hereby expressly forbidden to be taught therein; nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this chapter.

Historical: Laws 1899, 85, Sec. 65;
re-enacting Laws 1893, 187, Sec. 65.
Cross Reference: Religious tests,

qualifications and teachings prohibited: Const. Art. 9, Sec. 6.

Eighth Grade Examinations.

Sec. 669. It shall be the duty of the State Superintendent of Public Instruction to prepare, or cause to be prepared, eighth grade examination questions to be used by the county superintendents of the several counties of the State in the examination of applicants for eighth grade diplomas, and to prescribe the rules and regulations for conducting all such examinations. All pupils shall be required to take such eighth grade examination upon completing the eighth grade work, and only those pupils shall be entitled to pass who shall obtain a general average of not less than eighty-five per cent., and not falling below seventy per cent. in any branch. All pupils passing

such examination shall be granted a diploma by the county superintendent of public instruction. No pupil shall be permitted to enter the first year of any high school in the State of Idaho, who has not passed the eighth grade examination satisfactorily and obtained his or her diploma.

Historical: Laws 1907, 168, Secs. 1, 2 and 3.

Arbor Day.

Sec. 670. It shall be the duty of the county superintendent to set apart one day, in the proper time in each year between the first day of April and the first day of May, to be known as Arbor Day. He shall by written or printed notice, notify the clerk of each school district in his county of the day so set apart, at least twenty days prior to said day. It shall be the duty of the authorities of every public school in this State to assemble the pupils in their charge on that day in the school building, or elsewhere, as they may deem proper, and to provide for and conduct, under the general supervision of the county superintendents of public instruction, such exercise as shall tend to encourage the planting, protection and preservation of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results. The State Superintendent of Public Instruction shall have power to prescribe, from time to time, in writing, a course of exercises and instructions in the subjects hereinbefore mentioned, which shall be adopted and observed by the school authorities on Arbor Day, and upon receipt of copies of such course, sufficient in number to supply all the schools under his supervision, the county superintendent of public instruction shall promptly provide each of the schools under his charge with a copy, and cause it to be adopted and observed.

Historical: Laws 1903, 215, Secs. 1, 2 and 3.

Establishment of Kindergartens.

Sec. 671. The school board of any school district in the State is hereby empowered to establish and maintain free kindergartens, in connection with the public schools of said district, for the instruction of children between the ages of three and six years residing in said district, and shall establish such courses of training, study and discipline, and such rules and regulations governing such preparatory or kindergarten schools, as said board may deem best: *Provided*, That nothing in this section shall be construed to change the law relating to the taking of the census of the school population, or the apportionment of State and county school funds among the several counties and districts in this State: *Provided, further*, That the cost of establishing and maintaining such kindergartens shall be paid from the special school fund of said districts, and the said kindergartens shall be a part of the public school system, and governed, as far as practicable, in the same manner and by the same officers as is now, or hereafter may be, provided by law for the government of the other public schools of the State: *Provided, further*, That all teachers employed in these schools shall have a diploma from some reputable kindergarten training school, or shall be licensed in ac-

cordance with the rules and regulations established by the State Superintendent of Public Instruction.

Historical: Laws 1901, 108, Sec. 1.

CHAPTER 7.

STATE LIBRARY COMMISSION.

Section 672. Constitution of commission. 673. Management of traveling library.	Section 674. Accounts of commission.
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Constitution of Commission.

Sec. 672. The Attorney General, Secretary of State, State Superintendent of Public Instruction, and the president of the State University, ex officio, are hereby constituted a State Library Commission, of which the Attorney General shall be chairman, and the State Superintendent of Public Instruction secretary.

Historical: Laws 1903, 283, Sec. 1.

Management of Traveling Library.

Sec. 673. Said Commission shall have the management of the traveling library or libraries belonging to the State, and shall make such rules governing the use of the same, and of the books and property pertaining thereto, as it may deem necessary. Said Commission shall cause said books to be distributed throughout the State, and at suitable intervals change such distribution in such manner as to secure the use and enjoyment of said books to the people of the State. It shall co-operate with the management of public school and other free libraries within the State, and adopt such means as shall best promote their establishment. Said commission may receive donations of money, books or other property, real or personal, for the benefit of such traveling library or libraries, the title to which property shall vest in the State of Idaho, to be held and controlled by said Commission. Said Commission shall report annually to the Governor, with such recommendations as it may deem proper.

Historical: Laws 1903, 283, Sec. 2.

Cross Reference: Reports of officers and boards: Sec. 279.

Accounts of Commission.

Sec. 674. The secretary of said Commission shall keep a full report of the proceedings of said Commission, and accurate accounts of expenses incurred by it in carrying out the provisions of this chapter. The chairman of said Commission may issue certificates, countersigned by the secretary, for all claims against said Commission, incurred in the management of said traveling library or libraries, and in carrying out the objects of this chapter, which claims, when approved by the Board of Examiners, shall be paid by warrants drawn upon the fund in the State Treasury provided for such purpose.

Historical: Laws 1903, 283, Sec. 3.

CHAPTER 8.

PUBLIC LIBRARIES.

Section

675. Cities may establish libraries.
676. School district libraries: Election.
677. Directors of libraries.
678. Organization and powers of directors.

Section

679. Libraries to be free.
680. Report of directors.
681. Donations to library.
682. Taxes for existing libraries: Definitions.

Cities May Establish Libraries.

Sec. 675. The common council of every city and of every village of the State of Idaho shall have power to establish a public library and reading room, and for such purpose may annually levy, and cause to be collected, as other taxes are, a tax not exceeding one mill on the dollar of the taxable property of such city or village, to constitute a library fund, which shall be kept by the treasurer separate and apart from other moneys of the city or village, and be used exclusively for the purchase of books, periodicals, necessary furniture and fixtures, and whatever is required for the maintenance of such library and reading room.

Historical: Laws 1901, 3, Sec. 1.

School District Libraries: Election.

Sec. 676. The trustees of a school district in which is situated no incorporated town or village, on the petition of twenty electors thereof, shall, upon four weeks' notice published in some newspaper of general circulation published in the county wherein such district is situated, submit to the electors thereof, at the first election held therein for the purpose of electing a member, or members, of the board of trustees, following the publication of the said notice, the question whether there shall be a public library established in such school district for the use and benefit of the citizens thereof. Those voting at such election in favor of such library shall put upon their ballots the words, "Public Library, Yes," and those voting thereat against such library the words, "Public Library, No." If a majority of the electors voting at such election shall vote in favor thereof, the trustees aforesaid have authority, annually, to levy upon all the taxable property in such school district a tax not exceeding one mill on the dollar valuation thereof, to be applied to the establishment and maintenance of a library as aforesaid, and the procuring of suitable rooms for the same. All boards of school trustees acting under the provisions of this section shall perform the same duties required of, and have the same powers and authority granted to, the common council of a city or village by the provisions of this chapter under like conditions, and the treasurer of such board of trustees shall perform the duties of treasurer for the public library.

Historical: Laws 1901, 3, Sec. 2.

Directors of Library.

Sec. 677. For the government of such library and reading room there shall be a board of five directors appointed by the council of such city or village from among the citizens thereof at large, and

not more than one member of the council of such city or village shall, at any time, be a member of said board. Such directors shall hold their office for three years from the date of appointment and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into three classes: Two members shall form the first class and shall serve for one year from the date of appointment; two members the second class and shall serve for two years from the date of appointment, and one member the third class and shall serve for three years from the date of appointment. All vacancies shall be immediately reported to the proper council by the directors, and shall be filled by appointment in the same manner as appointments are originally made. Appointments to complete an unexpired term shall be for the residue of the term only. No compensation shall be paid or allowed to any director in any manner whatsoever.

Historical: Laws 1901, 3, Sec. 3.

Organization and Powers of Directors.

Sec. 678. Said directors shall, immediately after their appointment, meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library and reading room as may be expedient. They shall have the exclusive control of the expenditure of all moneys collected for the library fund, and the supervision, care and custody of the room or buildings constructed, leased or set apart for that purpose; and such money shall be drawn from the treasury by the proper officers upon properly authenticated vouchers of the board of directors without otherwise being audited. They may, with the approval of the common council, lease and occupy, or purchase or erect on purchased ground, an appropriate building: *Provided*, That not more than one-half the income in any one year can be set apart in said year for such purchase or building. They may appoint a librarian and assistants, and prescribe rules for their conduct.

Historical: Laws 1901, 3, Sec. 4.

Libraries to Be Free.

Sec. 679. Every library and reading room established under this chapter shall be forever free for the use of the inhabitants of the city, village or school district where located, always subject to such reasonable rules and regulations as the library board may find necessary to adopt and publish in order to render the use of the library and reading room of the greatest benefit to the greatest number, and they may exclude and cut off from the use of said library and reading room any and all persons who shall willfully violate such rules.

Historical: Laws 1901, 3, Sec. 5.

Report of Directors.

Sec. 680. The said board of directors shall make an annual itemized report to the State Library Commission on June 30th of each year, stating the condition of their trust, the various sums of money

received from the library fund and from all sources, and how much has been expended, the number of books and periodicals on hand, and the number added by purchase, gift or otherwise during the year, the number lost or missing, the number of books loaned out, and the general kind and character of such books, with such other statistics, information and suggestions as they may deem of general interest, and the State Library Commission may require.

Historical: Laws 1901, 3, Sec. 6.

Donations to Library.

Sec. 681. All persons desirous of making donations of money, personal property or real estate for the benefit of such library shall have the right to vest the title to the same in the board of directors created under this chapter, to be held and controlled by said board, when accepted according to the terms of the deed of gift, devise or bequest of such property; and as to such property the said board shall be held and considered to be the special trustees.

Historical: Laws 1901, 3, Sec. 7.

Taxes for Existing Libraries: Definitions.

Sec. 682. In case a free subscription library has been established in any city or incorporated village, and duly incorporated and organized, the council may levy a tax for its support as provided in this chapter, without change in the organization of such library association: *Provided*, It becomes a free library. The sums so raised shall be duly paid to the officer duly authorized to receive the same, and shall be under the control of said library association: *Provided*, That if at any time the said library association ceases to exist, or from any reason fails to provide a free circulating library as required by the provisions of this chapter, the books and other property accumulated from the proceeds of the levy herein authorized shall become the property of the city or village, and be subject to the control of the council as herein provided.

In this chapter, unless the context otherwise requires, "library" includes libraries with branches, loans, reference, traveling and reading room departments, lectures and museums; "city" includes towns and villages; "council" means the legislative body of an incorporated city, town or village; "mayor" means the chief executive officer of an incorporated city, town or village.

Historical: Laws 1901, 3, Sec. 8.

TITLE 5

STATE MILITIA

Chapter

1. Enumeration of persons liable to military duty.
2. Organization.
3. Staff department, officers and their duties.

Chapter

4. Discipline, uniforms, drills and encampments.
5. Military courts.
6. Miscellaneous.

Note: This act is based promarily on a circular dated Oct. 8, 1903, issued by the War Department. This circular outlines and suggests a general military law for the several States with the object of making their laws on this subject uniform. The classification and sectioning follows the act without change. Prior acts are as follows: Laws 1890-91, 217, re-enacted Laws 1899, 156; Laws 1893, 57; Laws 1905, 10.

CHAPTER 1.

ENUMERATION OF PERSONS LIABLE TO MILITARY DUTY.

Section

683. Persons liable to military duty.

Persons Liable to Military Duty.

Sec. 683. Every able bodied male citizen of the State of Idaho, and those who have declared their intention to become citizens of the United States, residing therein, between the ages of eighteen and forty-five years, except persons exempt by law shall be subject to military duty; excepting (a) persons exempted by any statute of this State; (b) all persons in the army and navy of the United States and those who have been honorably discharged therefrom; (c) idiots, lunatics, habitual drunkards, and felons convicted of infamous crimes and not pardoned.

Historical: Laws 1907, 195, Art. 1, Sec. 1.

Cross Reference: Persons liable to military duty: Const. Art. 14, Sec. 1.

CHAPTER 2.

ORGANIZATION.

Section

684. Governor is commander in chief.
685. Military staff.
686. Military units.
687. Election of officers.
688. Enlistment of recruits.
689. Selection of field and medical staff officers.
690. Appointment and commission of regimental staff.
691. Notice to and examination of staff officers.

Section

692. Examination for eligibility to commission.
693. Election to fill vacancies.
694. Bond and oath of officers.
695. Issuance of commission.
696. Corps of cadets.
697. Retired list.
698. Rank of officers: How determined.
699. Resignation of officers.
700. Vacation of office.

Section

- 701. Abandonment of companies.
- 702. Command of troops in field.
- 703. Exemption from taxes and jury duty.
- 704. Term of enlistment: Discharge.
- 705. Discharge of commissioned officers.

Section

- 706. Assessors to make military lists.
- 707. Transmission of lists to adjutant general.
- 708. Armory expenses: How paid.
- 709. Constitution of State Military Board.

Governor Is Commander in Chief.

Sec. 684. The Governor shall be commander in chief of the militia, except when it be called into the service of the United States, and may employ it for the defense or relief of the State, the enforcement of its laws and the protection of life and property within its territory. He shall make and publish regulations for the government of the National Guard, and shall have all the power necessary to carry into full effect the provisions of this title; and for the purpose of formulating these regulations, he may convene boards of officers who shall recommend, for his approval, a code prescribing the duties of the staff department, the messing and interior economy of the companies, sanitation of camps, rules for the preservation of health, etc.

Historical: Laws 1907, 195, Art. 2,
Sec. 1.

Military Staff.

Sec. 685. The Governor shall, as soon as practicable after assuming his office, appoint an adjutant general, who shall be chief of staff and inspector general, with the rank of brigadier general; one quarter master general with the rank of colonel, who shall also act as pay master; one commissary general with the rank of colonel; one assistant inspector general with the rank of lieutenant colonel; one assistant adjutant general with the rank of major; one medical director with the rank of lieutenant colonel; two or more aides de camp each with the rank of captain; all to take office immediately upon appointment by the Governor and to serve for two years, or until their successors are qualified, unless sooner removed by him: *Provided*, That the Governor shall have power to remove for cause any and all said officers, and to fill vacancies. The Attorney General of the State shall be ex-officio judge advocate general with the rank of lieutenant colonel. Should a United States army officer be detailed for duty with the National Guard, he shall be known as the deputy inspector general.

Historical: Laws 1907, 195, Art. 2,
Sec. 2.

Military Units.

Sec. 686. The military units of the organized militia shall be designated "The National Guard of Idaho." In time of peace it shall consist of the commander in chief, the corps of cadets of the State University; not more than one gatling gun or light battery; one squadron of cavalry of four troops; two regiments of twelve companies of infantry, divided into three battalions of four companies; a signal corps; a medical corps to consist of a surgeon with the rank of major, two assistant surgeons with the rank of captain, and one

assistant surgeon with the rank of first lieutenant, and the retired list, and shall be composed and organized as follows:

INFANTRY.

A company shall consist of: One captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, four sergeants, eight corporals, two cooks, two musicians, one artificer, eighty-seven privates. Total enlisted, 106. The minimum strength of a company shall be fifty-eight enlisted men.

A battalion shall consist of: One major, one battalion adjutant (first lieutenant), one battalion quartermaster and commissary (second lieutenant), one battalion sergeant major, four companies. Total enlisted (maximum), 425.

A regiment shall consist of: One colonel, one lieutenant colonel, one adjutant (captain), one quartermaster (captain), one commissary (captain), one surgeon (major), two assistant surgeons (captains), one assistant surgeon (first lieutenant), one chaplain (captain), one sergeant major, one quartermaster sergeant, one commissary sergeant, two color sergeants, one chief musician, one principal musician, one drum major, four sergeants, eight corporals, one cook, twelve privates (band 28), one sergeant, first class of the hospital corps, three sergeants of the hospital corps, six privates, first class, of the hospital corps, three privates of the hospital corps, three battalions. Total enlisted (maximum), 1,321.

CAVALRY.

A squadron shall consist of: One major, one squadron adjutant (first lieutenant), one squadron quartermaster and commissary (second lieutenant), one assistant surgeon (captain), one veterinary surgeon (first lieutenant), one squadron sergeant major.

A troop shall consist of: One captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, six sergeants, eight corporals, two cooks, two farriers and blacksmiths, one saddler, one wagoner, two trumpeters, seventy-six privates. Total enlisted (maximum), 100. The minimum strength of a troop shall be 51 enlisted men.

SIGNAL CORPS.

A company shall consist of: One captain, one first lieutenant, one second lieutenant, five first class sergeants, ten sergeants, ten corporals, thirty first class privates, twenty second class privates. Total enlisted, 75. The minimum strength of the company shall be thirty enlisted men. The company shall be divided into squads of suitable size to be stationed at places designated by the commanding officer of the National Guard. At least two thirds of the officers and men shall be expert telegraphers and electricians.

HOSPITAL CORPS.

The hospital corps of the National Guard shall consist of one ambulance company, one field hospital, and of the sergeants first class, sergeants, corporals, and privates of the hospital corps who are mem-

bers of regiments, separate battalions, and squadrons. The Governor shall be authorized to increase the number of enlisted men in the hospital corps so as to provide for medical attendance in batteries, separate troops, and companies, and such additional men shall be considered a part of the hospital corps. The ambulance company shall consist of: For medical and bearer work; one major, surgeon, commanding; one captain, assistant surgeon; one first lieutenant, assistant surgeon; four sergeants, first class; nine sergeants, one musician, thirty privates, first class, seventeen privates.

Historical: Laws 1907, 193, Art. 2,
Sec. 3.

Election of Officers.

Sec. 687. The company officers shall be elected by ballot, by the members of their respective commands, subject to the approval of the commander in chief. If the candidate elected fails to receive the approval of the commander in chief, his name shall not again be presented to fill the vacancy, except by permission of the commander in chief. In all cases, a majority of all of the votes of the organization, cast at an election, shall be necessary to a choice. All commissioned officers shall hold their commissions for three years from the date of election, or appointment, and continuously thereafter subject to removal at any time for cause. In case of vacancy, each officer and enlisted man, entitled to a vote at the election to fill the vacancy, shall be served with a notice at his last known address, at least ten days prior to said election.

Historical: Laws 1907, 195, Art. 2,
Sec. 4.

Cross Reference: Officers are to be

commissioned by the Governor and the manner of their selection is to be determined by law: Const. Art. 14, Sec. 3.

Enlistment of Recruits.

Sec. 688. After the organization of a company, battery, or troop, recruits may be enlisted into the same by the commanding officer, and shall be required to sign their names to an enlistment roll to be furnished by the adjutant general for that purpose, and such signing shall be legal enlistment. Every commissioned officer shall be empowered to administer the oath required on enlistment.

Historical: Laws 1907, 195, Art. 2,
Sec. 5.

Selection of Field, and Medical Staff Officers.

Sec. 689. The military officers of the State shall be chosen as follows: Field officers of the regiment, squadron and battalion by the written, or printed, votes of a majority of the commissioned officers of said company, squadron and battalion. The medical staff to be appointed by the commander in chief: *Provided*, That no officer, other than the medical staff, shall be commissioned until he has successfully passed an examination as to his educational and technical qualifications, necessary to an efficient performance of his duty, before a board of three qualified examiners, to be appointed by the commander in chief. And no officer shall be commissioned who is under twenty-one years of age.

Historical: Laws 1907, 195, Art. 2,
Sec. 6.

Appointment and Commission of Regimental Staff.

Sec. 690. The regimental staff shall be appointed by the colonel, and commissioned by the Governor, upon the recommendation of the commander thereof, subject to the provisions of the preceding section.

Historical: Laws 1907, 195, Art. 2,
Sec. 7.

Notice to and Examination of Staff Officers.

Sec. 691. Staff officers of the regiment and battalion and officers appointed as herein provided shall be notified by letter of their appointment, by the adjutant general. They shall be allowed thirty days from the date of such letter in which to prepare for an examination which will consist of a thorough examination as to their fitness for their position, and shall be conducted by the board of examiners heretofore prescribed. Should any of these officers fail to pass the examination they shall be reported as incompetent and shall not be commissioned. Appointments shall be made to fill vacancy or vacancies as the case may require.

Historical: Laws 1907, 195, Art. 2,
Sec. 8.

Examination for Eligibility to Commission.

Sec. 692. All members of any of the units of the National Guard of the State, who shall have served at least one year in the army of the United States, or in the National Guards of this or some other State, or who shall have attended some school or college where military instruction is had, shall be eligible to enter an examination to determine their eligibility for a commission: *Provided*, That such examination shall be held by the board of examiners heretofore provided, and shall consist of a thorough examination of the mental, moral and physical qualifications of the candidate. These examinations shall be in writing, and the questions therefor shall be prepared by the board of examiners. These questions shall be furnished the adjutant general who shall conduct the examination and forward the examination papers to the board of examiners, who shall carefully consider them and certify the names of the successful candidates to the adjutant general, who shall keep a roster of the same.

Historical: Laws 1907, 195, Art. 2,
Sec. 9.

Election to Fill Vacancies.

Sec. 693. When a vacancy occurs among the commissioned officers of any of the units aforesaid, the adjutant general shall notify the commanding officer, and furnish him a list of all the members of the command who are eligible to election. The commanding officer shall then order an election to be held, and shall furnish the list of eligible candidates to the officer directed to preside at the election.

Historical: Laws 1907, 195, Art. 2,
Sec. 10.

Bond and Oath of Officers.

Sec. 694. An officer thus elected shall, within ten days of his election, file his bond, and shall take and subscribe to the following oath or affirmation: "I do hereby solemnly swear (or affirm) that I will bear allegiance to the United States of America and to the State of Idaho; that I will serve them honestly and faithfully against all their enemies and opposers whomsoever; that I will observe and obey the orders of the President of the United States, the Governor of the State of Idaho, and the officers appointed over me according to the rules and articles for the government of the army of the United States and the National Guard of this State," before some officer qualified to administer oaths. The officer who administers this oath shall certify the fact, and transmit the oath or affirmation, properly sealed and attested, to the adjutant general, who shall file the same.

Historical: Laws 1907, 195, Art. 2,
Sec. 11.

Issuance of Commission.

Sec. 695. A commission signed by the Governor and countersigned by the adjutant general under seal of the adjutant general's office, shall then be issued to the officer, to take rank from the date of original appointment or election. If it shall appear to the satisfaction of the Governor, by the affidavit of a competent witness, that an officer offered any consideration, reward or favor, for the withholding of casting of a vote at the election at which he was chosen, he shall be dishonorably discharged from the service of the State: *Provided*, That no charge shall be allowed or pay received for any commission issued under the provisions of this title.

Historical: Laws 1907, 195, Art. 2,
Sec. 12.

missioned by the Governor: Const.
Art. 14, Sec. 3.

Cross Reference: Officers to be com-

Corps of Cadets.

Sec. 696. The corps of cadets shall be organized and governed by such rules as may be prescribed by the faculty of the University. They shall not be subject to duty in case of riots, tumults, breach of peace, resistance to process, invasion, or insurrection, but may only, with a consent of a majority of the faculty, be ordered to parade, encampment or other military exercise. They may, under orders of the commander in chief, be paraded on the University grounds for inspection.

Historical: Laws 1907, 195, Art. 2,
Sec. 13.

Retired List.

Sec. 697. The retired list shall consist of all ex-adjutants general, all ex-inspectors general, all ex-medical directors, ex-chief commissaries and quartermasters general, and such other officers as shall, after having served five years as officers, and enlisted men after having served nine years, apply to the Governor to be placed on the retired list, without pay.

Historical: Laws 1907, 195, Art. 2,
Sec. 14.

Rank of Officers: How Determined.

Sec. 698. The rank of officers now in the service or hereafter commissioned, shall date from date of election or appointment, and an officer who has served continuously in the same grade for more than one term, either by re-election or appointment, shall take rank from the date of his first commission in that grade.

Historical: Laws 1907, 195, Art. 2,
Sec. 15.

Resignation of Officers.

Sec. 699. The resignation of officers shall be addressed to the commander in chief and transmitted to the adjutant general, through the regular military channels; and all commanding officers, before forwarding a resignation, shall indorse thereon their approval or disapproval, together with all facts bearing on the case. But an officer tendering his resignation shall not be considered out of the service until his resignation has been accepted.

Historical: Laws 1907, 195, Art. 2,
Sec. 16.

Vacation of Office.

Sec. 700. An officer who moves out of the county where his command is located, or who absents himself from his command for one month without leave from his commanding officer, shall be considered as having vacated his office, and an election shall be ordered and held without delay to fill the vacancy.

Historical: Laws 1907, 195, Art. 2,
Sec. 17.

Abandonment of Companies.

Sec. 701. Whenever a company, troop or battery, becomes reduced in number below the minimum strength, (fifty-eight enlisted men), or from general insubordination, contention, or other cause becomes demoralized and inefficient, and its disbandment is therefore necessary for the good of the service, the commander in chief shall disband the same and order the officers thereof to be mustered out of service. But no member of the company, troop, or battery shall be dishonorably discharged except upon due trial and conviction by a court martial, or in some other lawful manner.

Historical: Laws 1907, 195, Art. 2,
Sec. 18.

Command of Troops in Field.

Sec. 702. The command of any military force called into service, under the provisions of this title, shall devolve upon the senior officer present of such force, until a field officer shall have been designated by the commander in chief.

Historical: Laws 1907, 195, Art. 2,
Sec. 19.

Exemption From Taxes and Jury Duty.

Sec. 703. All officers and enlisted men of the National Guard of Idaho are hereby declared exempt from all poll or road tax, and jury duty, so long as they continue active members thereof.

Historical: Laws 1907, 195, Art. 2,
Sec. 20.

Term of Enlistment: Discharge.

Sec. 704. Every enlisted man shall be held to service for a term of three years unless he be properly discharged. Upon the expiration of the service of any enlisted man, the commandant of his company, troop or battery, shall prepare a discharge on the blank furnished for that purpose, and submit it to the senior officer of the command to which he belongs, who, having signed it, shall return it to the commanding officer of the company, troop or battery in time for it to be delivered to the man on the day on which his term of service expires. In all other cases, enlisted men shall not be discharged except upon receipt of a specific order from the commander in chief directing such discharge. The company commander shall, upon his monthly return, report all discharges to his regimental, battalion, or squadron commander.

Historical: Laws 1907, 195, Art. 2,
Sec. 21.

Discharge of Commissioned Officers.

Sec. 705. At the expiration of the term of service, or upon the acceptance of the resignation of a commissioned officer, the adjutant general, upon the approval of the Governor, shall issue to such officer a discharge, showing the reason therefor, and the length of term served.

Historical: Laws 1907, 195, Art. 2,
Sec. 22.

Assessor to Make Military Lists.

Sec. 706. It shall be the duty of the assessor of each county in the State, annually, at the time prescribed by law for assessing property, to make out a list of all persons in the respective counties who are liable to military duties under the laws of the United States and the State of Idaho, which list shall designate the precinct in which each person named in such list resides, and shall be filed by such assessor in the office of the county auditor, of the respective counties, at the same time and in the same manner as is provided by law for the assessment roll; and the auditor shall keep the same open for inspection, as is provided by law for the assessment roll, and also record the same alphabetically, in his office in a book kept for that purpose.

Historical: Laws 1907, 195, Art. 2,
Sec. 23.

Transmission of Lists to Adjutant General.

Sec. 707. The said military assessment list shall be corrected in the same manner, and at the same time, as is provided by law for the assessment roll; and it shall be the duty of the county auditor of

each county, within thirty days after the list has been corrected, to transmit, to the adjutant general of the State, a certificate, under his official seal, of the total number of names on such military assessment list arranged according to the several precincts of the county.

Historical: Laws 1907, 195, Art. 2,
Sec. 24.

Armory Expenses: How Paid.

Sec. 708. There shall be expended annually, out of the general fund the sum of five hundred dollars, to each organized company of the National Guard for armory rent, and for rent of a State armory, until the State shall have provided and owns such institution. If the officers of any company aforesaid, neglect to secure a proper armory for drill purposes, or are remiss or neglectful in their attendance at the regular drills, or the company habitually falls in attendance below a minimum of twenty-five enlisted men, a penalty of five dollars per drill shall be deducted from the said armory rent. In addition thereto the county commissioners of each county may, in their discretion, expend annually, not to exceed \$150.00 out of the county current expense fund, for repairs or rent of armory buildings for the use of such company of the National Guard of Idaho as organized under the provisions of this title, and which shall meet, at least twice in each month, in such armory, for military instruction.

Historical: Laws 1907, 195, Art. 2,
Sec. 25.

Constitution of State Military Board.

Sec. 709. The State Military Board shall consist of the commander in chief, adjutant general, quartermaster general, a field officer and a captain of the line, to be designated by the commander in chief. It shall be the duty of the board to determine the necessary purchase of all equipment, supplies and stores required for the use of the National Guard.

Historical: Laws 1907, 195, Art. 2,
Sec. 26.

CHAPTER 3.

STAFF DEPARTMENT, OFFICERS AND THEIR DUTIES.

Section	Section
710. Duties of adjutant general.	714. Salary of adjutant general and clerk.
711. Duties of quartermaster general.	715. Annual appropriation for expenses.
712. Bonds of disbursing officers.	
713. Distribution of rosters and papers.	

Duties of Adjutant General.

Sec. 710. The adjutant general shall hold his office for a term of two years or until his successor is appointed and qualified, unless sooner removed for misconduct, or in the case of the vacation of his office by resignation duly accepted. He shall distribute all orders from the commander in chief; he shall be the organ of all communications from the State troops to the commander in chief, and shall

attend him when required in a review of the State troops or whenever ordered in the performance of duty; he shall obey and issue such orders as the commander in chief shall give in relation to all military matters, and shall be entitled to the use of the Coat of Arms of the State as his seal of office, with the words added thereto: "State of Idaho, Adjutant General's Office." He shall annually make return, in triplicate, of all militia of the State, one copy whereof he shall deliver to the commander in chief on or before the fifteenth day of December; one copy shall be transmitted to the President of the United States, on or before the first day of January thereafter, and one shall be filed in his office. He may have one chief clerk who shall be military storekeeper and a quartermaster with the rank of captain, which officer shall be appointed and commissioned by the Governor upon the recommendation of the adjutant general, and shall, at the time of his appointment, be an officer in active service in the National Guard of Idaho, and shall be entitled to the rights and privileges of officers of the National Guard of corresponding rank. The adjutant general shall, under the direction of the military board, purchase clothing, camp and garrison equipage, ammunition, and such other military stores as may be authorized, all of which shall be given into the custody of the quartermaster general: *Provided*, That where it is deemed inexpedient for the quartermaster general to carry out the provisions of the following section, all such duties shall devolve upon the adjutant general.

Historical: Laws 1907, 195, Art. 3,
Sec. 1.

is custodian of military records and
relics: Const. Art. 14, Sec. 4.

Cross Reference: Adjutant general

Duties of Quartermaster General.

Sec. 711. The quartermaster general shall keep in good order and preservation all ordnance and ordnance stores, clothing and equipment, camp and garrison equipage, flags, banners and military relics of all description, which are the property of the State and not issued to troops, and shall have control of the same, subject to the order of the commander in chief. He shall, upon requisition properly approved, issue ordnance and ordnance stores, clothing, camp and garrison equipage and such other stores as may be necessary to the respective commands.

Historical: Laws 1907, 195, Art. 3,
Sec. 2.

Bonds of Disbursing Officers.

Sec. 712. The adjutant general shall require a bond from all disbursing officers of his department and other officers in charge of public property, the amount to be fixed by the State Military Board and approved by the commander in chief, which bonds, when approved by the military board, shall be filed in the office of the adjutant general.

Historical: Laws 1907, 195, Art. 3,
Sec. 3.

Distribution of Rosters and Papers.

Sec. 713. The adjutant general shall provide the several departments, on their requisition, with the necessary rosters, books of

record, blank warrants, enlistments, discharges, rolls, and other papers required by law and regulation, at the expense of the State.

Historical: Laws 1907, 195, Art. 3,
Sec. 4.

Salary of Adjutant General and Clerk.

Sec. 714. The annual compensation of the adjutant general in time of peace shall be one thousand eight hundred dollars, and it shall be payable monthly out of the general fund not otherwise appropriated. The salary of the chief clerk and military store keeper shall be one thousand two hundred dollars annually, payable monthly out of the general fund not otherwise appropriated.

Historical: Laws 1907, 195, Art. 3,
Sec. 5.

Annual Appropriation for Expenses.

Sec. 715. For the purpose of defraying the current expenses of the militia; extra clerical hire and labor in State armory when required by the adjutant general or the quartermaster general; the arming and equipping of companies thereof as they are organized, freight, expressage, telegraph, telephone, printing of necessary blank forms, orders, circulars, paper, envelopes and postage for the official use of the adjutant general's office and of regimental, battalion, and company commanders, and such other imperative expenses not herein enumerated, there is hereby appropriated out of the general fund, not otherwise appropriated, the sum of two thousand six hundred dollars annually.

Historical: Laws 1907, 195, Art. 3,
Sec. 6.

CHAPTER 4.

DISCIPLINE, UNIFORMS, DRILLS AND ENCAMPMENTS.

Section	Section
716. Regulations governing National Guard.	723. Penalty for losing military property.
717. Attendance at drills and target practice.	724. Unauthorized wearing or disposing of uniforms.
718. Failure to attend a misdemeanor.	725. Annual encampments.
719. Discharge for non-attendance: Re-instatement.	726. Pay of officers and men in service.
720. Uniforms of officers.	727. Same: Audit and allowance of pay.
721. Same: Allowance for uniforms.	728. Same: Officers serving on boards.
722. Full dress uniforms.	

Regulations Governing National Guard.

Sec. 716. The National Guard of Idaho shall be governed by the military law of the State, the code of regulations, the orders of the commander in chief, and, wherever applicable, by the regulations, articles of war, and customs of the service in the United States army.

Historical: Laws 1907, 195, Art. 4,
Sec. 1.

Attendance at Drills and Target Practice.

Sec. 717. Officers and enlisted men of each company, troop or

battery, shall assemble for and undergo drill and instruction at the company, troop or battery armories, or for target practice, when ordered so to do by the commanding officer of such company, troop or battery.

Historical: Laws 1907, 195, Art. 4,
Sec. 2.

Failure to Attend a Misdemeanor.

Sec. 718. Any officer or member of any company, troop or battery who absents himself from any meeting for drill or instruction without written consent of the officer in command, having been ordered to attend by general or special order, shall be guilty of a misdemeanor, and it shall be the duty of the commanding officer of such company to cause a warrant for his arrest to be issued, and he shall be tried before a justice of the peace as in the case of other misdemeanors, and upon conviction thereof shall be imprisoned in the county jail for a period not exceeding thirty days, or by a fine not exceeding one hundred dollars, or punished by both such fine and imprisonment.

Historical: Laws 1907, 195, Art. 4,
Sec. 3.

Discharge for Non-Attendance: Reinstatement.

Sec. 719. Any member who absents himself from all meetings for instruction during a period of thirty days, unless properly excused by his commanding officer, shall, in addition to all other penalties, be debarred from the exemption from jury duty, be considered a deserter, and be dishonorably discharged. Any enlisted man may be so punished for absence from his command when called out for the suppression of riot or for any other active duty, for drunkenness, immoral conduct or insubordination, continued non-attendance at drills, or refusal to pay any fine properly imposed. Any enlisted man dishonorably discharged may, at the discretion of the Governor, be reinstated, provided his application for reinstatement is approved by the officer who made the application for his discharge, and provided that upon reinstatement he re-enters the service and serves out the unexpired term of his enlistment.

Historical: Laws 1907, 195, Art. 4,
Sec. 4.

Uniforms of Officers.

Sec. 720. The uniform and equipment of all the officers in the National Guard shall be the uniform of the officers of the United States army, except as to such minor changes as may be ordered by the commander in chief. The letters "I-D-A" (abbreviation for the word "Idaho") shall appear on collars of all uniforms. The button shall have the coat of arms of the United States. Facings shall constitute a part of the uniform and these facings shall be distinct for each regiment, squadron or battery.

Historical: Laws 1907, 195, Art. 4,
Sec. 5.

Same: Allowance for Uniform.

Sec. 721. Commissioned officers shall receive annually the sum of

thirty dollars and mounted officers the sum of fifty dollars to assist in uniforming and equipping themselves, but not until they have performed eighty per centum of all ordered duty, and been in active service as such a calendar year of twelve months from date of commission.

Historical: Laws 1907, 195, Art. 4,
Sec. 6.

Full Dress Uniforms.

Sec. 722. Each regiment, squadron or battery may also be equipped with full dress uniform at the expense of the individual members, unless otherwise provided by the Legislature. But no uniform shall be selected for this purpose until recommended by a board of officers, and the recommendation shall have been approved by the commander in chief.

Historical: Laws 1907, 195, Art. 4,
Sec. 7.

Penalty for Losing Military Property.

Sec. 723. Any member of the National Guard losing, destroying, mutilating, or making away with, any of the military property of the United States, thus furnished, or any part thereof, shall be punished at the discretion of a court martial.

Historical: Laws 1907, 195, Art. 4,
Sec. 8.

Unauthorized Wearing or Disposing of Uniforms.

Sec. 724. It shall be unlawful for any person, not a member of the National Guard, to wear any portion of the uniform prescribed for the National Guard of this State. Any person so offending shall, upon conviction, be fined in the sum of not less than five nor more than twenty-five dollars, or imprisoned in the county jail for a period of not more than twenty-five days. And whosoever shall secrete, sell, dispose of, offer for sale, purchase or retain, after proper demand is made, or in any manner pawn or pledge, any uniform, overcoat, clothing or equipage, or any part thereof, which shall have been issued by the State, or purchased with company funds, shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for not less than one, nor more than three months, or by a fine of not more than one hundred dollars, nor less than fifty dollars.

Historical: Laws 1907, 195, Art. 4,
Sec. 9.

Annual Encampments.

Sec. 725. It shall be the duty of the commander in chief, under Sections 14 and 18 of an act of Congress, entitled "An Act to Promote the Efficiency of the Militia, and for Other Purposes," approved January 21, 1903, to order an encampment of the National Guard to be held each year, such encampment to be held at some convenient point to be selected by the commander in chief. At least one month's notice of such encampment shall be given each company commander by his commanding officer.

Historical: Laws 1907, 195, Art. 4, Sec. 10. The words "of Congress, entitled An Act" are inserted to define the act referred to. The sections indicated are as follows:

Sec. 14. That whenever it shall appear by the report of inspections, which it shall be the duty of the Secretary of War to cause to be made at least once in each year by officers detailed by him for that purpose, that the organized militia of a State or Territory or of the District of Columbia is sufficiently armed, uniformed, and equipped for active duty in the field, the Secretary of War is authorized, on the requisition of the Governor of such State or Territory, to pay to the quartermaster general thereof, or to such other officer of the militia of said State as the said Governor may designate and appoint for the purpose, so much of its allotment out of the said annual appropriation under section sixteen hundred and sixty-one of the Revised Statutes as amended as shall be necessary for the payment, subsistence, and transportation of such portion of said organized militia as shall engage in actual field or camp service for instruction, and the officers and enlisted men of such militia while so engaged shall be entitled to the same pay, subsistence, and transportation or travel allowances as officers and enlisted men of corresponding grades of the Regular Army are or

may hereafter be entitled by law, and the officer so designated and appointed shall be regarded as a disbursing officer of the United States, and shall render his accounts through the War Department to the proper accounting officers of the Treasury for settlement, and he shall be required to give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for the safe-keeping and payment of the public moneys so intrusted to him for disbursement.

Sec. 18. That each State or Territory furnished with material of war under the provisions of this or former acts of Congress shall, during the year next preceding each annual allotment of funds, in accordance with section sixteen hundred and sixty-one of the Revised Statutes as amended, have required every company, troop, and battery in its organized militia not excused by the Governor of such State or Territory to participate in practice marches or go into camp of instruction at least five consecutive days, and to assemble for drill and instruction at company, battalion, or regimental armories or rendezvous or for target practice not less than twenty-four times, and shall also have required during such year an inspection of each such company, troop, and battery to be made by an officer of such militia or an officer of the Regular Army.

Pay of Officers and Men in Service.

Sec. 726. Officers and enlisted men, when serving under the orders of the Governor to prevent violation of the laws of the State, or to prevent or suppress riot or insurrection, or to repel or prevent invasion, or during State encampments or maneuvers, shall, until such time as other provision is made for the payment of the services rendered, receive pay out of the general fund of the State, not otherwise appropriated, at the following rates: All commissioned officers shall receive the same pay as is paid to the United States army officers of like grade. Sergeant majors, quartermaster sergeants and hospital stewards shall be paid the sum of two dollars per day for the first twenty days' service; first sergeants and acting hospital stewards, one dollar and seventy cents per day for the first twenty days' service; sergeants and corporals, one dollar and sixty-five cents per day for the first twenty days' service, and privates one dollar and fifty cents per day for the first twenty days' service. After twenty days' service, fifty cents less per day shall be paid to each of the above non-commissioned officers and privates. The necessary transportation, medical attendance and supplies, quarters and subsistence, shall also be provided for them, and reasonable allowance shall also be made for animals necessarily used.

When the troops of the State, by order of the Governor, shall engage in any encampment or maneuver in conjunction with troops of the United States army, in which case they receive the same pay as officers and men of like grade in the United States army, the

enlisted men shall receive the same pay as in case of State encampment, less the pay received from the United States Government.

Historical: Laws 1907, 195, Art. 4,
Sec. 11.

Same: Audit and Allowance of Pay.

Sec. 727. Payments under the preceding section shall be made by the paymaster; no voucher for any such payment shall be audited unless certified as correct by the proper commanding officer and passed upon by the State Military Board; pay rolls of companies, troops and batteries, and also of field officers, non-commissioned staff of bands and regiments, shall be furnished and certified to by the commanding officer of such organizations.

Historical: Laws 1907, 195, Art. 4,
Sec. 12

Same: Officers Serving on Boards.

Sec. 728. All officers detailed to serve on any board, commission or court, ordered by the Governor or under his authority by the commanding officer of the National Guard, or by other proper authority in pursuance of any provision of this title, shall be paid their actual expenses for each day actually employed in such board, commission or court, or traveling to and from the same; and shall be allowed mileage at the rate of seven cents for each mile necessarily traveled, going and returning. All such claims, under the provisions of the above section, shall be allowed by the State Auditor and payment made out of the general fund of the State, not otherwise appropriated: *Provided*, Any or all such claims have been certified as correct and passed upon by the State Military Board, and are accompanied by all receipts and vouchers covering the same.

Historical: Laws 1907, 195, Art. 4,
Sec. 13.

CHAPTER 5.

MILITARY COURTS.

Section

- 729. Military courts enumerated.
- 730. Manner of ordering courts.
- 731. Same: General courts martial.
- 732. Transmission of proceedings.
- 733. Attendance of witnesses.

Section

- 734. Collection of fines.
- 735. Fines and dues paid to company treasurers.
- 736. Imprisonment for non-payment of fine.

Military Courts Enumerated.

Sec. 729. The military courts of this State shall be: (a) courts of inquiry; (b) general courts martial; (c) summary courts.

Historical: Laws 1907, 195, Art. 5,
Sec. 1.

Manner of Ordering Courts.

Sec. 730. Courts of inquiry and summary or garrison courts may be ordered under such regulations as may be prescribed by the Military Board in the Code of Regulation provided for in Section 716.

Historical: Laws 1907, 195, Art. 5,
Sec. 2.

Same: General Courts Martial.

Sec. 731. General courts martial for the trial of officers and enlisted men upon charges and specifications preferred by commissioned officers shall be ordered by the commander in chief, and shall consist of not less than five nor more than nine members and a judge advocate. The jurisdiction and mode of procedure of general courts martial shall conform to the jurisdiction and practice of like courts in the United States army.

Historical: Laws 1907, 195, Art. 5,
Sec. 3.

Transmission of Proceedings.

Sec. 732. The proceedings of all general courts martial, and all papers relating thereto, shall be transmitted to the adjutant general for the action of the commander in chief.

Historical: Laws 1907, 195, Art. 5,
Sec. 4.

Attendance of Witnesses.

Sec. 733. The president of the courts martial, court of inquiry, or summary court, may issue subpoenas and force the attendance of witnesses, and punish a refusal, as provided for in civil court.

Historical: Laws 1907, 195, Art. 5,
Sec. 5.

Collection of Fines.

Sec. 734. When fines assessed by courts martial or courts of inquiry are not paid within ten days after the sentence is approved, a list thereof, and of the delinquents, certified by the judge advocate of such courts martial or courts of inquiry, shall be placed in the hands of the justices of the peace, within the precinct in which the delinquents reside, who shall thereupon render judgment against such delinquents, separately, together with the costs of suits, without issuing process, and shall issue process thereon, directed to any constable of the proper precinct who shall collect the same; and the money so collected shall, after deduction of costs, be paid over to such justices, who shall immediately dispose of the same as herein provided.

Historical: Laws 1907, 195, Art. 5,
Sec. 6.

Fines and Dues Paid to Company Treasurers.

Sec. 735. Fines assessed by courts martial, and dues, shall, when collected, be paid to the treasurer of the proper company, troop or battery for the use of the organization, and all other fines shall, when collected, be paid into the treasury of the proper county, to the credit of the State military fund.

Historical: Laws 1907, 195, Art. 5,
Sec. 7.

Imprisonment for Non-Payment of Fine.

Sec. 736. Whenever any constable to whom execution shall have been issued, as provided in Section 734, shall fail to discover sufficient

goods and chattels to satisfy the same, he shall take the body of such delinquent and carry him to the common jail of such county; the jailer shall keep the said delinquent closely confined, without bail, for one day for any fine or penalty not exceeding one dollar, and one additional day for each additional dollar, unless the fine or penalty, together with the costs, be sooner paid; but no such imprisonment shall extend beyond the period of thirty days: *Provided, however,* That the prisoner may be liberated at any time by order of the officer who ordered the court that imposed the fine and penalty.

Historical: Laws 1907, 195, Art. 5,
Sec. 8.

CHAPTER 6.
MISCELLANEOUS.

Section	Section
737. Enlistment in United States army.	744. Muster rolls and returns.
738. President may order guard into service.	745. Returns of military property.
739. Service in case of invasion or insurrection.	746. Custodians of funds to give bonds.
740. Same: Troops called to colors.	747. National Guard associations.
741. Same: Notice to men to appear.	748. Distribution of copies of title.
742. Same: Punishment for refusal to obey.	749. State flag.
743. Records to be kept by adjutants and sergeants.	750. Loan of arms to Grand army posts.

Enlistment in United States Army.

Sec. 737. When the State shall be called upon to furnish volunteers, the members of the National Guard shall be given preference in enlistment, but no member of the National Guard shall be required to enlist in the army of the United States in the event of war.

Historical: Laws 1907, 195, Art. 6,
Sec. 1.

President May Order Guard Into Service.

Sec. 738. The National Guard of this State may be ordered into the service of the United States by the President of the United States, for any purpose for which he is authorized to use the militia of the State by the Constitution and statutes of the United States.

Historical: Laws 1907, 195, Art. 6,
Sec. 2.

Service in Case of Invasion or Insurrection.

Sec. 739. When an invasion is made or an insurrection occurs, or is threatened, the Governor shall order the National Guard to repel or suppress the same. When there is in any town, city or county, a tumult, riot, mob or body of men, acting together by force with attempt to commit a felony or to offer violence to persons or property or by force and violence to break and resist the laws of the State, or when such tumult, riot or mob is threatened, and the fact is made to appear to the Governor, the sheriff of the county, or the mayor of the city or town, the Governor may issue his orders to any com-

manding officer of any portion of the National Guard, directing him to order his command to appear at a time and place designated, to aid the civil authorities to suppress such violence and to support the law.

Historical: Laws 1907, 195, Art. 6,
Sec. 3.

Same: Troops Called to Colors.

Sec. 740. The officer to whom the order or call is directed, shall forthwith order the troops therein mentioned to parade at the time and place appointed; and if he neglects or refuses to obey, or if any officer refuses or neglects to obey, any such order issued in pursuance of any such call, he shall be cashiered, and be further punished by a fine of not less than one hundred dollars, and not more than one thousand dollars, or imprisonment not to exceed six months, or both, at the discretion of the court martial; or a person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall, on conviction thereof by the District Court, be imprisoned not to exceed six months, or fined not to exceed one thousand dollars, or both, at the discretion of the court. All fines assessed under this section shall be paid to the treasurer of the State for the benefit of the State military fund.

Historical: Laws 1907, 195, Art. 6,
Sec. 4.

Same: Notice to Men to Appear.

Sec. 741. When the commanding officer of a company, troop, or battery orders out his command for such duty, he may order enlisted men to notify the men in such organization to appear at the time and place appointed. These men shall give notice of such time and place of meeting to each man personally, or by leaving at his usual place of abode a written or printed order, signed by the enlisted men serving the same, which notice shall be sufficient warning.

Historical: Laws 1907, 195, Art. 6,
Sec. 5.

Same: Punishment for Refusal to Obey.

Sec. 742. Every enlisted man who refuses or neglects to serve such notice, when duly ordered so to do, and every officer and enlisted man who, having been served with notice as provided in the preceding section, refuses or neglects to obey the same promptly, shall be fined not less than five nor more than one hundred dollars, at the discretion of the court martial. All fines assessed under this section shall be paid to the treasurer of the proper county for the benefit of the State military fund.

Historical: Laws 1907, 195, Art. 6,
Sec. 6.

Records to Be Kept by Adjutants and Sergeants.

Sec. 743. Adjutants of battalions and squadrons, and first sergeants of troops, batteries, companies, etc., shall attend to, and record in books to be provided for that purpose, all returns made; and perform such other duties as may, from time to time, be required of

them by the commandant of the organization. In case of their absence suitable persons shall be required to perform their duties.

Historical: Laws 1907, 195, Art. 6,
Sec. 7.

Muster Rolls and Returns.

Sec. 744. The commanding officer of each company, troop, or battery, shall annually, in March, furnish the adjutant general a muster roll of his company, and shall, within ten days after each encampment required by law, make a return to the battalion or squadron commander showing the state of his company with the number enrolled therein, and the condition of all their arms, uniforms, equipments and ammunition. The commander of each regiment, squadron or battery shall, within twenty days after each encampment, make to the adjutant general a like report of his command.

Historical: Laws 1907, 195, Art. 6,
Sec. 8.

Returns of Military Property.

Sec. 745. Every officer, or other person, having the custody or control of the military property of the State, shall, from time to time, make a return of the same in such departments as the regulations may require.

Historical: Laws 1907, 195, Art. 6,
Sec. 9.

Custodian of Funds to Give Bonds.

Sec. 746. Every person having the custody of the funds of any military organization, shall enter into bonds, in twice the amount likely to be held in his hands at any time, but never in less amount than one hundred dollars, with not less than two good and sufficient sureties to be approved by the county clerk of the county in which said sureties reside, payable to the State of Idaho for the use of such organization, for the faithful and honest discharge of his duties, and the careful keeping and disbursements of said funds.

Historical: Laws 1907, 195, Art. 6,
Sec. 10.

National Guard Associations.

Sec. 747. The officers of any regiment, or battalion or squadron not part of their regiment, and members of any troop, battery, company, signal corps, hospital corps, or field music, may organize themselves into an association, of which the commanding officer shall be president, and, by a vote of two-thirds of all their members, form by-laws, rules and regulations not inconsistent with this title, and which shall conform to the system prescribed in general regulations, and be submitted to the commanding officer of the National Guard for his approval, and when approved by him, such by-laws, rules and regulations shall be binding upon all commissioned officers and enlisted men therein, but they may be altered in the manner provided for their adoption, from time to time, as may be found necessary.

Historical: Laws 1907, 195, Art. 6,
Sec. 11.

Distribution of Copies of Title.

Sec. 748. The Governor shall, from time to time, cause such numbers of this title as may be deemed necessary to be printed, and the same shall be distributed to the National Guard by the adjutant general.

Historical: Laws 1907, 195, Art. 6,
Sec. 12.

State Flag.

Sec. 749. A State flag for the State of Idaho is hereby adopted, the same to be as follows: The State flag of the State of Idaho shall be blue, charged with the name of the State, in such colors and of such size and dimensions as shall be prescribed by the adjutant general of the State of Idaho. Said adjutant general shall have general supervision over the form and construction of said flag.

Historical: Laws 1907, 304, Secs. 1,
2.

Loan of Arms to Grand Army Posts.

Sec. 750. The Governor of this State is hereby empowered to loan to the Grand Army posts within the State, arms and equipments not to exceed six stands to each post, upon said Grand Army posts receiving for the same; with a provision that they be returned on demand and without expense to the State. In case any part of said arms and equipments are lost by fire or otherwise, the value thereof, as stipulated when the arms were drawn, together with the freight thereon, shall be returned to the State Treasury.

Historical: Rev. St. 1887, Sec. 742.

TITLE 6

PUBLIC INSTITUTIONS

Chapter

1. Insane asylums.
2. Soldiers' Home.
3. School for deaf, dumb and blind.
4. Industrial Training School.
5. Law libraries.

Chapter.

6. Historical Society.
7. Grand Army headquarters.
8. State fish hatchery.
9. Purchase of supplies for institutions.

Note: For State Penitentiary, see Pen. Code Secs. 8460-8512.

CHAPTER 1.

INSANE ASYLUMS.

Article

1. Government of asylum.
2. Commitment to asylum.

Article

3. North Idaho Insane Asylum.

ARTICLE 1.

GOVERNMENT OF ASYLUM.

Section

751. Board of directors.
752. Appointment of board.
753. Same: Powers and duties.
754. Audit and payment of expenses.
755. Officers not to be interested in contracts.
756. Compensation of directors.
757. Medical superintendent: Qualifications.
758. Same: Residence and general duties.
759. Same: Powers and duties.

Section

760. Same: Estimate of expenses.
761. Same: Salary.
762. Same: Bond.
763. Salaries: When payable.
764. Approval of bonds.
765. Discharge of patients.
766. Insane convicts.
767. Sufferers from contagious diseases excluded.
768. Admission of non-residents.
769. Repayment of money on discharge of patient.

Board of Directors.

Sec. 751. The Idaho Insane Asylum, located at Blackfoot, is under the management and control of a board of directors, consisting of three persons.

Historical: Rev. St. 1887, Sec. 750.
13 Ter. Ses. (1885) 62, Sec. 10.

California Legislation: See Pol. Code 1872, Sec. 2136; Deering's Code, ib.; repealed: Kerr's Code, ib.

Cross Reference: Directors to have

control and management of the asylum, and to appoint a medical superintendent: Const Art. 10, Sec. 6.

Cited: (Dis. op.) Pyke v. Steunenberg (1897) 5 Ida. 614; 51 Pac. 614.

Appointment of Board.

Sec. 752. Said board of directors must be nominated, and, by and with the advice and consent of the Senate, appointed by the Governor. Their term of office is two years and until their successors are appointed and qualified. Before entering upon the duties of their office

they must each take and subscribe an oath to support the Constitution of the United States and well and faithfully discharge their duties according to law, and the oath provided for county officers. They must elect one of their number president, and another secretary.

Historical: Rev. St. 1887, Sec. 751.
See 13 Ter. Ses. (1885) 62, Sec. 10.

Cross Reference: Governor to appoint directors subject to confirmation

by the Senate: Const. Art. 10, Sec. 6.

Cited: (Dis. op.) Pyke v. Steunenberg (1897) 5 Ida. 614; 51 Pac. 614.

Same: Powers and Duties.

Sec. 753. The powers and duties of the board of directors of the Insane Asylum are as follows:

1. To make by-laws, not inconsistent with the laws of this State, for their own government and the government of the asylum;

2. To hold stated meetings at the asylum for the transaction of business quarterly, and they may provide in their by-laws for calling special meetings when necessary;

3. To keep a record of their proceedings open at all times to the inspection of any citizen;

4. To elect a medical superintendent, to hold his office during the pleasure of the board;

5. To receive, take and hold property, both real and personal, in trust for the State and for the use and benefit of the asylum;

6. To appoint all officers and employes of the asylum, prescribe their duties, and remove them when in their judgment the good of the public service requires;

7. To visit the asylum once in three months, and keep themselves constantly advised of all items of labor and expense, and the condition of the buildings and the property of the asylum, and they shall have power to make such improvements as, in their judgment, are actually necessary for the care of the inmates. The board have discretionary power in case of absolute necessity to remove patients to the nearest possible safe and appropriate place;

8. To cause the accounts of the asylum to be so kept and reported as to show the quality, quantity, cost and vendor of every article purchased;

9. To examine and audit the expenditures for salary of employes, and all other expenses incident to the conduct of the asylum, and care and maintenance of the patients, and if approved by them, to certify the same to the Auditor;

10. To make regulations and fix the terms for the admission of insane persons who are not indigent or who are not residents of the State. All receipts from such source must be paid into the State Treasury;

11. To make diligent inquiry into the departments of labor and expenses, the condition of the asylum and its property;

12. To report to the Governor on the 15th day of September in each year, a statement of the receipts and expenditures, the condition of the asylum, the number of patients during the preceding year under treatment, and of such other matters touching the duties of the board as is advisable. To make a bi-ennial report to the Governor substantially in the same manner as above, on or before the

first day of December prior to each session of the Legislature. To report to the State Auditor, which must be a certified copy of the records of each meeting of the board.

Historical: Rev. St. 1887, Sec. 752. (See 13 Ter. Ses. (1885) 62, Secs. 12, 13.) Omitting the last clause of subd. 7, providing for improvements during 1887 and 1888, and requiring the biennial report to be made on or before the first day of December, instead of 30 days before the session of the Legislature (subd. 12) to conform to Laws 1903, 149 (Codes, Sec. 279).

California Legislation: Similar through subd. 4: Pol. Code, 1872, Sec. 2137; as amended: Deering's Code, ib.; repealed: Kerr's Code, ib.

Cited: (Dis. op.) Pyke v. Steunenberg (1897) 5 Ida. 614; 51 Pac. 614.

Audit and Payment of Expenses.

Sec. 754. All itemized bills of purchases and other expenditures made, when examined by the board of directors and found correct, must be certified by the president of the board then sitting, and the same transmitted to the Auditor to be audited and allowed in the same manner as other accounts against the State are audited and allowed. The State Auditor must draw his warrant on the State Treasurer for the amount so audited. The said Treasurer is hereby authorized and required to pay the same out of any money in the State Treasury appropriated therefor.

Historical: Rev. St. 1887, Sec. 753. (See 13 Ter. Ses. (1885) 62, Sec. 19.) Rewritten by omitting the provision requiring the Auditor to audit and allow the accounts, such duty being devolved on the Board of Examiners under Const. Art. 4, Sec. 18, and by substituting the words "appropriated therefor" in place of "not otherwise

appropriated," to conform to Const. Art. 7, Sec. 13.

California Legislation: See Pol. Code 1872, Sec. 2138; Deering's Code, ib.; repealed: Kerr's Code, ib.

Cited: (Dis. op.) Pyke v. Steunenberg (1897) 5 Ida. 614; 51 Pac. 614.

Officers Not to Be Interested in Contracts.

Sec. 755. No director, superintendent or employe must be pecuniarily interested in any contract for supplies furnished for the asylum.

Historical: Rev. St. 1887, Sec. 754. (See 13 Ter. Ses. (1885) 62, Sec. 18.) Last sentence of section. The first part, relating to letting contracts for supplies, is superseded by Laws 1905, 38 (Secs. 863-866 post.)

California Legislation: See Pol. Code 1872, Sec. 2139; Deering's Code, ib.; repealed: Kerr's Code, ib.

Cross Reference: Contract for supplies: Secs. 863-866.

Compensation of Directors.

Sec. 756. The directors must each be paid five dollars per day for each day actually employed, which must include the time employed in traveling to and from the asylum: *Provided*, That no director shall receive more than one hundred dollars per annum for per diem service, and in performing the necessary visitations required by this chapter, and must be reimbursed for all the necessary expenditures incurred in their official duties; such accounts to be allowed and paid as other accounts against the asylum are allowed and paid.

Historical: Rev. St. 1887, Sec. 755. See 13 Ter. Ses. (1885) 62, Sec. 15. The punctuation and paragraphing is changed to express what seemed to be the meaning of the section.

California Legislation: See Pol. Code 1872, Sec. 2140; as amended: Deering's Code, ib.; repealed: Kerr's Code, ib.

Medical Superintendent: Qualifications.

Sec. 757. The medical superintendent must be a graduate in medicine and must have practiced his profession five years after the date of his diploma.

Historical: Rev. St. 1887, Sec. 756.
See 13 Ter. Ses. (1885) 62, Sec. 13.

Code 1872, Sec. 2150; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Residence and General Duties.

Sec. 758. He must reside at the asylum and give his entire time and attention to promote the best interests of the patients. His duties not specified in this chapter, must be prescribed by the board of directors in their by-laws.

Historical: Rev. St. 1887, Sec. 757.
See Ter. Ses. (1885) 62, Sec. 13.

Same: Powers and Duties.

Sec. 759. He is the chief executive officer of the asylum, with powers and duties as follows:

1. To control the patients, prescribe the treatment and prescribe and enforce the sanitary regulations of the asylum;

2. With the consent of the board of directors, to fix the number and compensation of, and appoint, control and remove, the attendants and assistants;

3. To prescribe and enforce the performance of the duties of the attendants and assistants;

4. To ascertain and report to the board of directors the amount, character and quality of provisions, fuel and clothing required for the six months ending on the first of June and December in each year;

5. With the consent of the board of directors to make any expenditure necessary in the performance of his duties, except for provisions, fuel and clothing;

6. To receive and pay to the State Treasurer all moneys found upon insane persons;

7. To keep a daily record of his official acts in the mode prescribed by the by-laws;

8. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible to report a statement thereof, and of the general condition of the asylum, to the board of directors.

Historical: Rev. St. 1887, Sec. 758.
See 13 Ter. Ses. (1885) 62, Sec. 18.

Code 1872, Sec. 2152; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: Similar: Pol.

Same: Estimate of Expenses.

Sec. 760. He must estimate quarterly in advance, the probable expenses of the asylum, and submit such estimate to the directors at their stated meetings, for their consideration and approval.

Historical: Rev. St. 1887, Sec. 759.
See 13 Ter. Ses. (1885) 62, Sec. 18.

Code 1872, Sec. 2153; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Salary.

Sec. 761. The salary of the medical superintendent must be fixed by the board of directors.

Historical: Rev. St. 1887, Sec. 760.
See 13 Ter. Ses. (1885) 62, Sec. 13.

Code 1872, Sec. 2154; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: See Pol.

Same: Bond.

Sec. 762. He must execute an official bond in the sum of five thousand dollars, with two or more sufficient sureties, conditioned that he will faithfully discharge his duties as such officer.

Historical: Rev. St. 1887, Sec. 761.
See 13 Ter. Ses. (1885) 62, Sec. 13.

Code 1872, Sec. 2155; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: See Pol.

Salaries: When Payable.

Sec. 763. The salaries and compensation fixed by the provisions of this chapter must be paid quarterly.

Historical: Rev. St. 1887, Sec. 762.
See 13 Ter. Ses. (1885) 62, Sec. 14.

Code 1872, Sec. 2193; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: See Pol.

Approval of Bonds.

Sec. 764. The official bonds required by the provisions of this chapter must be approved by the board of directors, and filed in the office of the Auditor.

Historical: Rev. St. 1887, Sec. 763.
See 13 Ter. Ses. (1885) 62, Sec. 13.

Code 1872, Sec. 2194; Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: Similar: Pol.

Discharge of Patients.

Sec. 765. Insane persons received in the asylum must upon recovery be discharged therefrom.

Historical: Rev. St. 1887, Sec. 764.

California Legislation: Same: Pol.

Code 1872, Sec. 2197; Deering's Code, ib.; repealed: Kerr's Code, ib.

Insane Convicts.

Sec. 766. Insane convicts must be received into the insane asylum, and returned to the State Prison again as provided in the Penal Code.

Historical: Rev. St. 1887, Sec. 765.
See 13 Ter. Ses. (1885) 62, Sec. 32.

Deering's Code, ib.; repealed: Kerr's Code, ib.

California Legislation: Same except "section 1230 of" inserted after "in" last line: Pol. Code 1872, Sec. 2198;

Cross Reference: Receipt and return of insane convicts: Secs. 8194-8200.

Sufferers From Contagious Diseases Excluded.

Sec. 767. No person laboring under any contagious or infectious disease must be admitted into the asylum as a patient.

Historical: Rev. St. 1887, Sec. 766.
See 13 Ter. Ses. (1885) 62, Sec. 20.

Admission of Non-Residents.

Sec. 768. No insane person non-resident of this State, must be received into the asylum unless he became insane within this State, and the indigent insane of this State must have the preference.

Historical: Rev. St. 1887, Sec. 767. See 13 Ter. Ses. (1885) 62, Sec. 21. California Legislation: Same	through "state," line 3, rest omitted: Pol. Code 1872, Sec. 2199; Deering's Code, ib.; repealed; Kerr's Code, ib.
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Repayment of Money on Discharge of Patient.

Sec. 769. If, at the time of the discharge of a person from the asylum, or after the death and burial of any person therein confined, there remains in the custody of the directors or superintendent any moneys paid for the support or maintenance of such person, it must, upon demand, be repaid.

Historical: Rev. St. 1887, Sec. 768. California Legislation: Same except "Treasurer" for "Superinten-	dent," line 3: Pol. Code 1872, Sec. 2200; Deering's Code, ib.; repealed Kerr's Code, ib.
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ARTICLE 2.

COMMITMENT TO ASYLUM.

Section	Section
770. Warrant of arrest.	779. Money found on insane person.
771. Subpoenas for witnesses.	780. Cases of idiocy and delirium tremens excluded.
772. Same: For physician.	781. Conveyance of patient to asylum.
773. Examination of witnesses.	782. Fee of physician.
774. Same: Of physician.	783. Appointment of guardian for insane person.
775. Certificate of physician.	
776. Form of certificate.	
777. Order of commitment.	
778. Duty of sheriff.	

Note: Commitment of insane defendant in criminal action to asylum Sec. 8197.

Warrant of Arrest.

Sec. 770. Whenever it appears by affidavit to the satisfaction of a magistrate of the county that any person within the county is so far disordered in his mind as to endanger health, persons, or property, he must issue and deliver to some peace officer for service a warrant, directing that such person be arrested and taken before any judge of a court of record within the county for examination.

Historical: Rev. St. 1887, Sec. 769. See 11 Ter. Ses. (1881) 300. California Legislation: Same: Pol.	Code 1872, Sec. 2210; Deering's Code, ib.; repealed: Kerr's Code, ib.
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Subpoenas for Witnesses.

Sec. 771. When the person is taken before the judge, he must issue subpoenas to two or more witnesses, best acquainted with such insane person, to appear and testify before him at such examination.

Historical: Rev. St. 1887, Sec. 770. California Legislation: Same: Pol.	Code 1872, Sec. 2211; Deering's Code, ib.; repealed: Kerr's Code, ib.
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Same: For Physician.

Sec. 772. The judge must also issue subpoenas for at least one graduate of medicine to appear and attend such examination.

Historical: Rev. St. 1887, Sec. 771. California Legislation: Same except "two" for "one," line 1: Pol. Code	1872, Sec. 2212; Deering's Code, ib.; repealed: Kerr's Code ib.
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Examination of Witnesses.

Sec. 773. At the examination the persons subpoenaed must appear and answer all questions pertinent to the matter under investigation.

Historical: Rev. St. 1887, Sec. 772.

California Legislation: Same: Pol.

Code 1872, Sec. 2213; Deering's Code, ib.; repealed: Kerr's Code, ib.

Same: Of Physician.

Sec. 774. The physician must hear such testimony, and must make a personal examination of the alleged insane person.

Historical: Rev. St. 1887, Sec. 773.

California Legislation: Same: Pol. Code 1872, Sec. 2214; Deering's Code,

ib.; repealed: Kerr's Code, ib.

Cited: Corker v. Pence (1906) 12 Ida. 152; 85 Pac. 388.

Certificate of Physician.

Sec. 775. The physician, after hearing the testimony and making the examination, must, if he believes such person to be dangerously insane, make a certificate, under his hand, showing as near as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property;

2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease;

3. The nativity, age, residence, occupation, and previous habits of the person;

4. The place from whence the person came, and the length of his residence in this State.

Historical: Rev. St. 1887, Sec. 774.

California Legislation: Same except ["physicians" for "physician"; "they believe" for "he believes";

"their hand" for "his hand," first paragraph: Pol. Code 1872, Sec. 2215; Deering's Code, ib.; see Kerr's Code, Sec. 2170.

Form of Certificate.

Sec. 776. The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by, the medical superintendent of the asylum.

Historical: Rev. St. 1887, Sec. 775.

California Legislation: Same: Pol.

Code 1872, Sec. 2216; Deering's Code, ib.; see Kerr's Code, Sec. 2170.

Order of Commitment.

Sec. 777. The judge, after such examination and certificate made, if he believes the person so far disordered in his mind as to endanger health, person, or property, must make an order that he be confined in the Insane Asylum.

Historical: Rev. St. 1887, Sec. 776.

California Legislation: Same: Pol. Code 1872, Sec. 2217; additional pro-

visions as amended: Deering's Code, ib.; see Kerr's Code, Sec. 2171.

Duty of Sheriff.

Sec. 778. The insane person, together with the order of the judge and certificate of the physician, must be delivered to the sheriff of the county, and by him must be delivered to the agent appointed by the medical superintendent for the conveyance of such insane person to the asylum. Immediately upon receiving such insane person, to-

gether with the order and certificate aforesaid, the sheriff must immediately notify the medical superintendent of the asylum by telegraph, if there be telegraph communication accessible between the place where such insane person is and the asylum; if not, then the sheriff shall notify the medical superintendent of the asylum by letter, to be sent not later than one day after the sheriff receives the order and certificate aforesaid, of the facts; and at the time of delivering the order and certificate to the sheriff, the examining physician, or physicians, together with the judge issuing the order, shall also deliver to the sheriff a certificate showing whether, in their judgment, one or more persons will be required to convey such insane person to the asylum, and the sheriff shall inform the medical superintendent of the asylum as to such facts at the time of giving the notice in this section provided.

Historical: Rev. St. 1887, Sec. 777;
amended Laws 1895, 17, Sec. 1; re-
enacted Laws 1899, 114, Sec. 1.

Money Found on Insane Person.

Sec. 779 Any moneys found on the person of an insane person at the time of arrest must be certified to by the judge and sent with such person to the asylum, there to be delivered to the medical superintendent, who must deliver the same to the State Treasurer. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of such person while in the asylum; if the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the asylum.

Historical: Rev. St. 1887, Sec. 778. | **Code** 1872, 2219; **Deering's Code,**
California Legislation: Same; **Pol.** | **ib.;** repealed: **Kerr's Code, ib.**

Cases of Idiocy and Delirium Tremens Excluded.

Sec. 780. No case of idiocy or imbecility, or simple feebleness of mind, must be maintained at, nor must any case of delirium tremens be admitted into, the asylum.

Historical: Rev. St. 1887, Sec. 779. | **Code** 1872, Sec. 2220; **Deering's Code,**
California Legislation: Same; **Pol.** | **ib.;** repealed: **Kerr's Code, ib.**

Conveyance of Patient to Asylum.

Sec. 781. Upon receipt of the notice from the sheriff provided for in Section 778 of this chapter, the medical superintendent must at once designate some person among the employees of the asylum as an agent to transport such insane person to the asylum, and, if it be deemed necessary, he shall designate also from said employees a person to act as the assistant of such agent. Such agent (and assistant if any be appointed) must at once proceed to the county where such insane person is in custody, and demand and receive from the sheriff such insane person, the order of the judge and the certificate of the physician, the agent receipting to the sheriff therefor. The agent must thereupon convey such insane person, together with such order and certificate, to the asylum, and surrender the same to the medical superintendent; and the latter shall at once notify the Gov-

ernor that such insane person has been received at said asylum. The actual and necessary expenses of the agent, his necessary assistant, and of the insane person when transferred from the custody of the sheriff to the asylum, must be allowed and paid as other claims against the asylum; but the compensation of the agent and necessary assistant shall be only that allowed them while employed in the asylum.

Historical: Rev. St. 1887, Sec. 780; amended Laws 1895, 17, Sec. 2; re-enacted Laws 1899, 114, Sec. 2.

Fee of Physician.

Sec. 782. The physician attending each examination of an insane person is allowed five dollars, to be paid by the county treasurer of the county where the examination was had, on the order of the board of county commissioners.

Historical: Rev. St. 1887, Sec. 781.
California Legislation: Similar: Pol.

Code 1872, Sec. 2222; Deering's Code, ib.; repealed: Kerr's Code, ib.

Appointment of Guardian for Insane Person.

Sec. 783. The judge must inquire into the ability of an insane person committed by him to the asylum to pay for his transportation to the asylum, and the expense of the examination, and bear the actual charges and expenses for the time that such person may remain in the asylum. In case an insane person committed to the asylum under the provisions of this chapter is possessed of real or personal property sufficient to pay such charges and expenses, the judge must appoint a guardian for such person, who is subject to all the provisions of the general laws of this State in relation to guardians, as far as the same are applicable; and when there is not sufficient money in the hands of the guardian, the judge may order a sale of property of such insane person, or as much thereof as may be necessary, and from the proceeds of such sale the guardian must pay said expenses and the board of directors the sum fixed upon by them each month, quarterly in advance, for the maintenance of such ward; and also out of the proceeds of such sale, or such other funds as he may have belonging to his ward, pay for such clothing as the medical superintendent may from time to time furnish to such insane person; and he must give a bond, with good and sufficient sureties, payable to the board of directors and approved by the judge, for the faithful performance of the duties required of him by this section as long as the property of his insane ward is sufficient for the purpose.

Historical: Rev. St. 1887, Sec. 782.

ARTICLE 3.

NORTH IDAHO INSANE ASYLUM.

Section

- 784. Establishment of asylum.
- 785. Fund created by land grant.
- 786. Board of directors.
- 787. Officers, records and proceedings of board.

Section

- 788. Meetings of board.
- 789. Control of funds.
- 790. General management of asylum.
- 791. Persons to be committed.

Note: The provisions of the act from which this chapter is taken (Laws 1905, 196) relating to the location and erection of the asylum, are omitted as now obsolete. The provisions relating to the issuance of bonds are also omitted, but are preserved in force by Codes Sec. 17, subd. 57.

Establishment of Asylum.

Sec. 784. A State Insane Asylum, to be known as the Northern Idaho Insane Asylum, is hereby established, at the town of Orofino, in the County of Nez Perce.

Historical: Laws 1905, 196, Sec. 1. Omitting the provisions creating the commission, and providing for the location of the asylum, and re-written

to conform to the actual establishment and location of the asylum, which has been consummated.

Fund Created by Land Grant.

Sec. 785. For the purpose of creating for this institution a permanent fund, the State Board of Land Commissioners is hereby directed, and it is made their duty, to set aside forty thousand acres of land granted to the State of Idaho by the act of Congress, entitled "An Act to Provide for the Admission of the State of Idaho Into the Union," approved July 3, 1890, "for other State, charitable, educational or penal and reformatory purposes," for the exclusive use and benefit of the aforesaid Insane Asylum. Said lands to be held, disposed of, and the proceeds thereof used and applied, for the benefit of said institution, subject to the provisions of said admission act and the Constitution of the State of Idaho, and, so far as may be practicable, in conformity with the established procedure of holding, disposing of and applying, the proceeds of lands granted to the common schools of the State of Idaho. The Board of Land Commissioners are directed to immediately set aside forty thousand acres of said land, if selected, and if not selected to use the utmost dispatch in selecting and setting aside the same. The State Board of Land Commissioners is hereby directed to provide separate record books in proper form to be known as "Northern Idaho Insane Asylum Records," in which shall be kept all record of matters relating to said land.

Historical: Laws 1905, 196, Sec. 3.

Board of Directors.

Sec. 786. For the purpose of managing the said Northern Idaho Insane Asylum there is hereby created a board of directors. Said board shall consist of three persons appointed by the Governor, by and with the consent of the Senate, who shall hold office for a term of three years, or until their legally appointed successors are qualified: *Provided*, That the members of the first board shall be appointed for one, two and three years, respectively. In case of vacancy in said board during the recess of the Senate, the Governor shall nominate some fit person to fill such vacancy until the next meeting of the Senate. Before entering upon their official duties the directors shall each take and subscribe to the official oath required by law: *Provided, further*, That nothing herein contained shall affect the unexpired terms of office of the present members of said board.

Historical: Laws 1905, 196, Sec. 12. Omitting "erecting, equipping and" before "managing" as now obsolete.

The second proviso is added to preserve the present constitution of the board.

Officers, Records and Proceedings of Board.

Sec. 787. The said board of directors shall elect a president, who shall be one of their number, and a secretary. The president shall preside at meetings and sign all contracts. The State Treasurer shall be ex-officio treasurer of said board of directors. The secretary shall keep a full record of the proceedings of the board in a book provided for that purpose, an an itemized statement of all accounts and of all expenditures authorized by said board, and shall perform such other duties as shall pertain to the office and as shall be required by the board. A majority of the board of directors shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of said board of directors shall participate in any proceedings in which he or she shall have personal or pecuniary interests. Every vote and official act of said board of directors shall be entered on record.

Historical: Laws 1905, 196, Sec. 13.
"Directors" inserted for "trustees" to

conform to the nomenclature of the preceding section.

Meetings of Board.

Sec. 788. Said board of directors shall hold two meetings at said asylum, annually, but special meetings may be called by the president of the board, sending written notices of at least ten days to each member. The actual and necessary personal expenses for mileage and board incurred by the members of said board of directors in carrying out the provisions of this article shall be paid on proper certificates out of any funds belongong to said asylum in the hands of the treasurer.

Historical: Laws 1905, 196, Sec. 15.
"Trustees" changed to "directors" to conform to preceding sections. "Ac-

tual" for "natural" expenses, to correct what seemed to be a clerical error.

Control of Funds.

Sec. 789. All funds appropriated for the use and benefit of said asylum from every source, including the available interest arising from investment of the proceeds of the sale of lands set apart as hereinbefore provided for, shall be under the control and direction of said board of directors, subject to the provisions herein contained. The treasurer of the board shall pay out of such funds all orders or drafts for money to be expended under the provisions of this article. Such orders or drafts shall be drawn by the State Auditor upon certificates of the secretary, countersigned by the president of the board of directors, and shall be approved by the State Board of Examiners. No such certificates shall be given except on accounts audited and allowed by said board of directors.

Historical: Laws 1905, 196, Sec. 16.
"Trustees" changed to "directors."

General Management of Asylum.

Sec. 790. The privilege, powers, duties and obligations of the said board of directors herein named, and the mode of governing said Northern Idaho Insane Asylum, shall be the same and identical with the privileges, powers, duties, obligations and mode of procedure as now fixed by law for the managing of the State Insane Asylum,

now located at Blackfoot, Idaho, found in Sections 753 to 769, inclusive, of these Codes.

Historical: Laws 1905, 196, Sec. 17.
Omitting the opening clause relating

to the future completion of the asylum, as now obsolete.

Persons to Be Committed.

Sec. 791. All persons from the Counties of Kootenai, Bonner, Shoshone, Latah, Nez Perce and Idaho, who are in the future regularly tried upon the charge of insanity, and found guilty of said charge, and all idiots, not otherwise provided for, whose freedom is considered a menace to the public safety, shall be committed to the Northern Idaho Insane Asylum; and persons who have been heretofore committed from the six aforementioned counties and are now confined in the State Insane Asylum at Blackfoot, shall, at the discretion of the board of directors of the two State asylums, and the approval of the Governor, be removed from the asylum at Blackfoot to the Northern Idaho Insane Asylum; and under the same conditions, any of the inmates of the asylum at Blackfoot, whether now or in the future, may be removed to the Northern Idaho Insane Asylum; and if it is thought advisable by the two boards of directors, the Governor concurring, any insane person or idiot may be committed directly to the Northern Idaho Insane Asylum, from any of the counties of the State of Idaho.

Historical: Laws 1905, 196, Sec. 18.
"Lewis" and "Clark" counties changed
to "Kootenai" and "Bonner" to con-

form to the existing political divisions
of Northern Idaho.

CHAPTER 2.

SOLDIERS' HOME.

Section	Section
792. Establishment of home.	796. Physician and matron.
793. Lands set aside for support.	797. Inspection of home.
794. Board of trustees.	798. Use of pension money for support.
795. Commandant: Appointment, duties and salary.	799. Uniform of inmates.

Establishment of Home.

Sec. 792. There shall be established in this State an institution under the name of the Soldiers' Home, which institution shall be a home for honorably discharged Union soldiers, sailors and marines who served in the Union armies during the late War of the Rebellion, or in Indian wars in which the Government of the United States was involved; also for honorably discharged soldiers, sailors and marines who served in the Spanish-American war and the Philippine insurrection incident thereto; also for members of the State National Guard disabled while in the line of duty; and veterans of the Mexican War: *Provided*, That before a person is admitted to said Home he shall have been a bona fide resident of this State for not less than two years, and shall have registered and voted at one or more general elections in the State of Idaho prior to making application for admission thereto.

Historical: Laws 1893, 91, Sec. 1;
amended Laws 1897, 7, Sec. 1; re-en-
acted Laws 1899, 190, Sec. 1; amend-

ed Laws 1905, 4, Sec. 1; amended
Laws 1905, 414, Sec. 1; amended Laws
1907, 15, Sec. 1.

Lands Set Aside for Support.

Sec. 793. Twenty-five thousand acres of land, granted to the State under the provisions of the act of Congress, approved July 3d, 1890, granting to the State of Idaho one hundred and fifty thousand acres of land for charitable and other purposes, are hereby set apart, and are reserved for the support and maintenance of the said Soldiers' Home. Out of the first lands selected under said grant, and out of the first proceeds arising from the sale of said lands, there shall be repaid to the State, the sum of twenty-five thousand dollars, appropriated by Section 2 of an act entitled "An act to establish a Soldiers' Home," approved March 2, 1893, together with interest thereon, at the rate of five per cent per annum, from the date of appropriation until paid.

Historical: Laws 1899, 190, Sec. 3; re-enacting Laws 1893, 91, Sec. 2. The appropriation referred to was made by Section 2 of the original act from which this chapter is taken. That section is omitted, as are all appropriation acts and parts of acts, because

to have included them would have created new appropriations. All existing appropriations are saved by Section 17 of these Codes.

Cited: Powell v. Spackman (1901) 7 Ida. 692; 65 Pac. 503.

Board of Trustees.

Sec. 794. The Governor, the Secretary of State and the Attorney General shall be ex-officio members of, and shall constitute, a board of trustees of the Soldiers' Home. The Governor shall be chairman of said board, and the Secretary of State, the secretary thereof. The general supervision and the government of the Soldiers' Home shall be vested in said board of trustees, and a majority of said board shall constitute a quorum to do business. Said board shall have power to prescribe such rules and regulations as may be necessary, touching all matters connected with said Home not inconsistent with law. The board may receive donations of money and other valuables for the purposes of the home.

Historical: Laws 1899, 190, Sec. 4; re-enacting Laws 1897, 7, Sec. 2. The concluding clause relating to donations to the home is taken from Section 7 of the act, which relates, in its

other provisions, to the purchase of a site and buildings, which have been consummated leaving the section obsolete except as herein preserved.

Commandant: Appointment, Duties and Salary.

Sec. 795. The board of trustees shall appoint a commandant of said Soldiers' Home, who shall hold office during the pleasure of the board. The commandant shall have entire control and management of the Home, under such rules and regulations as may be prescribed by the board. He shall give a bond in favor of the State of Idaho in the penal sum of four thousand dollars, conditioned on the faithful performance of his duties, such bond to be approved by the Governor. The commandant shall receive for his services such sum as may be fixed by the board of trustees, not to exceed twelve hundred dollars per year, and rations.

Historical: Laws 1897, 7, Sec. 3; re-enacted Laws 1899, 190, Sec. 5; amended Laws 1903, 219, Sec. 1.

Physician and Matron.

Sec. 796. The board of trustees shall appoint a physician for the home who shall receive a salary to be fixed by the board, not exceed-

ing fifty dollars per month, and who shall hold office during the pleasure of the board, and the board of trustees shall appoint a matron for the home who shall receive a salary to be fixed by the board, not exceeding forty dollars per month, and who shall hold office during the pleasure of the board.

Historical: Laws 1897, 7, Sec. 4;
re-enacted Laws 1899, 190, Sec. 6;
amended Laws 1903, 219, Sec. 2.

Inspection of Home.

Sec. 797. The said Soldiers' Home shall at all times be subject to inspection by the board of managers of the national home for disabled volunteer soldiers, under such regulations as said board may adopt; and shall also be subject to inspection at any time by the Governor or any officer of his staff designated by him for the purpose of making such insepection.

Historical: Laws 1899, 190, Sec. 8;
re-enacting Laws 1893, 91, Sec. 8.

Use of Pension Money for Support.

Sec. 798. In making rules and regulations governing the admission, maintenance and discharge of the inmates of said Home, it shall be lawful for said board of trustees to make it a condition for admission to said Home, that all soldiers admitted thereto, receiving a pension from the United States exceeding four dollars per month, shall pay over said excess to the board of trustees, and said board of trustees shall, in cases where such soldier has no wife or child living dependent upon him for support, or in circumstances of dependence and want, deposit said excess in the State Treasury to the credit of the Soldiers' Home fund, to be used in defraying the expenses of maintaining said institution, but if there be such wife or child so dependent upon said soldier, then and in that case it shall be the duty of said board to pay over such excess to such wife or child of such soldier, taking duplicate receipts therefor, one of which receipts shall be delivered to said soldier, and the other filed with the records of the board.

Historical: Laws 1899, 190, Sec. 9;
re-enacting Laws 1897, 7, Sec. 5.

Uniform of Inmates.

Sec. 799. The inmates of said Home shall be clad in the uniform of the Grand Army of the Republic, to be furnished by the State out of funds appropriated for such purpose.

Historical: Laws 1899, 190, Sec. 10;
re-enacting Laws 1893, 91, Sec. 13.

CHAPTER 3.

SCHOOL FOR DEAF, DUMB AND BLIND.

Section	Section
800. Board of Education may make arrangements.	803. Census of deaf, dumb and blind.
801. Examination of applicants.	804. Same: Duty of district census marshals.
802. Definition of deaf and blind.	

Board of Education May Make Arrangements.

Sec. 800. The State Board of Education is hereby empowered and authorized to make the necessary arrangements for the education of the deaf, dumb and blind of this State, including the providing of a suitable building therefor, and equipping the same so far as may be necessary, including also the arranging for the conveyance of the scholars to and from the school, at the expense of the State, and including the hiring of a superintendent, instructors and employes, and the fixing of their compensation, and such other matters as may be necessary to carry into effect the provisions of this chapter: *Provided, however,* That the State Board of Education may, if it becomes necessary, enter into contract with one or more of the adjacent States or Territories (having an institution for the education of the deaf, dumb and blind) for the education of the deaf, dumb and blind of the State of Idaho, upon the most economical terms possible: *Provided, however.* That if it should become necessary to make any such contract, no more than three hundred dollars per year shall be paid for each scholar's instruction and board, including board during vacation.

Historical: Laws 1907, 240, Sec. 1.

Examination of Applicants.

Sec. 801. The State Board of Education is authorized to provide for the careful examination of all applicants for admission to the school to be provided by the said board, and the expenses of the said examinations, and all other expenses in connection with the education of the deaf, dumb and blind, under the authority conferred by this chapter, shall be paid out of the State Treasury, as provided by law.

Historical: Laws 1907, 240, Sec. 2.

Definition of Deaf and Blind.

Sec. 802. All children between the ages of six and twenty-one years, who are too deaf or too blind to be educated in our public schools, shall be deemed deaf and blind for the purposes of this chapter.

Historical: Laws 1907, 240, Sec. 3.

Census of Deaf, Dumb and Blind.

Sec. 803. It shall be the duty of the Board of Education to ascertain the number of deaf, dumb and blind persons in the State, as defined by the preceding section, and, as soon as practicable thereafter, to take the necessary steps for their education, as provided for in this chapter.

Historical: Laws 1907, 240, Sec. 4.

Same: Duty of District Census Marshals.

Sec. 804. It is hereby made the duty of the census marshal of each school district in the State of Idaho, when he shall enumerate the children of school age in his district, to carefully ascertain what children in that district are deaf or blind, as defined in Section 802, and he shall note the same, age and sex of such child or children, also the name of parents or guardian or other person having the legal or actual charge of such child or children, and shall report the

same to the county superintendent of public instruction, and said county superintendent of public instruction shall immediately report the same to the State Superintendent of Public Instruction.

Historical: Laws 1907, 240, Sec. 5.

CHAPTER 4.

INDUSTRIAL TRAINING SCHOOL.

Article	Article
1. Government of school.	2. Commitment of delinquents.

Note: Sections 20 to 26, of the act from which this chapter is taken, relating to the issuance and sale of bonds for the improvement of the school, is omitted from these Codes, but is preserved in force by Sec. 17, subd. 38.

ARTICLE 1.

GOVERNMENT OF SCHOOL.

Section	Section
805. Establishment.	815. Report of superintendent.
806. Board of trustees.	816. Religious services.
807. Proceedings of board.	817. State superintendent to prescribe studies.
808. Officers of board.	818. School constitutes an independent district.
809. General powers of board.	819. Reports to governor.
810. Meetings of board.	820. School to be non-sectarian.
811. Control of funds.	821. Land to be set aside for school.
812. Appointment and removal of superintendent.	822. Courses of study.
813. Appointment and qualifications of teachers.	
814. Trustees to prescribe regulations and fix salaries.	

Establishment.

Sec. 805. A State Industrial Training School is hereby established at the town of St. Anthony, in Fremont County, State of Idaho, to be called the "Idaho Industrial Training School." The purposes of such school shall be the care, protection, training and education of delinquent, dependent and neglected children, and to provide for the care, control and discharge of juvenile offenders.

Historical: Laws 1903, 12, Sec 1; name changed to "The Idaho Industrial Training School" Laws 1905, 227, Sec. 1. Omitting the clause "to be located at such place and in such manner as hereinafter provided," and	inserting in lieu thereof, "at the town of St. Anthony." The act created a commission to locate the school "at a particular place in Fremont County," and the commission fixed the location at St. Anthony.
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Board of Trustees.

Sec. 806. A board of trustees is hereby created to be known as the board of trustees of the Idaho Industrial Training School, consisting of four members. All of said members shall be appointed; two shall be men and two shall be women. No more than two shall belong to one political party, and no more than one shall be appointed from any one county, and two shall be interested in humanitarian work. Said board of trustees shall be appointed by the Governor and confirmed by the Senate for the term of four years, and until their successors are appointed and qualified: *Provided*, That of the first board appointed, two shall hold office for two years and

two for four years, and the Governor and State Superintendent of Public Instruction shall be ex-officio members of the board of trustees. It shall be the duty of the Governor to fill by appointment all vacancies that may from any cause occur in the board of trustees: *Provided*, That he shall appoint the new member from the political party of the retiring member.

Before entering upon the discharge of the duties of their respective offices, each member shall take and subscribe an oath, or affirmation, that he or she will support the Constitution of the United States and the Constitution of the State of Idaho, and will faithfully discharge the duties of said office, which oath or affirmation shall be filed with the Secretary of State.

Historical: Laws 1903, 12, Secs. 2, 16. The phraseology is slightly changed to conform to grammatical

rules. The provisions for filling vacancies is Sec. 16 of the original act.

Proceedings of Board.

Sec. 807. The said board of trustees shall conduct its proceedings in such a manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of said board of trustees shall participate in any proceedings in which he or she has a personal or pecuniary interest. Every vote and official act of said board of trustees shall be entered on record.

Said board of trustees shall have an official seal, which shall be judicially noticed. Said board of trustees may sue and be sued, and may take, in the name of the State, and hold in trust for the school, any and all money, real estate or personal property that may be bequeathed to said school.

Historical: Laws 1903, 12, Sec. 3.

Officers of Board.

Sec. 808 At their first meeting and biennially thereafter, the said board of trustees shall elect a president and secretary. The State Treasurer shall be ex officio treasurer of said board of trustees. It shall be the duty of the secretary of said board to keep an exact and detailed account of the doings of said board and an itemized account of all expenditures authorized by said board.

Historical: Laws 1903, 12, Sec. 4.

General Powers of Board.

Sec. 809. The said board of trustees are hereby authorized, and it is made their duty, to take and at all times to have general supervision and control of all buildings and property appertaining to said school, and to have general charge and control of all buildings to be constructed. They shall have power to let contracts for the erection of all buildings, and also the entire supervision of their construction. All buildings for housing the pupils shall be on "cottage plan." For the better grading of inmates, each cottage shall accommodate not more than twenty-five persons.

Historical: Laws 1903, 12, Sec. 5.

Meetings of Board.

Sec. 810. Said board of trustees shall hold two meetings at said school, annually, but special meetings may be called by the president of the board, by sending written notices of at least ten days to each member. The actual and necessary personal expenses for mileage and board incurred by the members of said board of trustees in carrying out the provisions of this chapter, shall be paid, on proper certificates, out of any funds belonging to said school in the hands of the treasurer.

Historical: Laws 1903, 12, Sec. 6.

Control of Funds.

Sec. 811. All funds appropriated for the use and benefit of said school from every source, including the available interest arising from investment of the proceeds of the sale of lands set apart as hereinafter provided for, shall be under the control and direction of said board of trustees, subject to the provisions herein contained. The treasurer of the board of trustees shall pay out of such funds all orders or drafts for money to be expended under provisions of this chapter. Such orders or drafts shall be drawn by the State Auditor upon certificates of the secretary, countersigned by the president of the board of trustees, and shall be approved by the State Board of Examiners. No such certificates shall be given except on accounts audited and allowed by said board of trustees.

Historical: Laws 1902, 12, Sec. 7.

Appointment and Removal of Superintendent.

Sec. 812. The board of trustees shall appoint a superintendent, who shall be especially fitted for the position, and shall be a person experienced in such work as is intended to be carried on in this school. He shall be retained as long as his work is bringing good results, irrespective of political affiliations. The superintendent shall, before entering upon the duties of his office, give a good and sufficient bond, to be approved by the board of trustees, conditioned for the faithful discharge of his duties. The superintendent may be removed by the board of trustees for neglect of duty, improper conduct, malfeasance in office, incompetency, or whenever the interests of the school shall be best subserved thereby. The board of trustees shall, on recommendation of the superintendent, appoint an assistant superintendent, who may be removed by the superintendent.

Historical: Laws 1903, 12, Sec. 8. and the first paragraph of Sec. 9. The phraseology of Sec. 8 is slightly

changed to conform to grammatical rules.

Appointment and Qualifications of Teachers.

Sec. 813. All officers, teachers and employees shall be appointed by the superintendent, by and with the advice and consent of the board of trustees; and such officers, teachers and employees may be removed by the superintendent whenever the interests of the school will be best subserved thereby. All teachers, except specialists, shall hold first-class certificates from the State Superintendent of Public Instruction. Specialists shall hold diplomas from some accredited school in their specialty.

Historical: Laws 1903, 12, last paragraph of Sec. 9 and Sec. 10.

Trustees to Prescribe Regulations and Fix Salaries.

Sec. 814. The superintendent shall conduct the said school under rules and regulations prescribed by the board of trustees, and said board of trustees shall fix the salaries of all officers and teachers, and the wages of all employees.

Historical: Laws 1903, 12, Sec. 11.

Report of Superintendent.

Sec. 815. The superintendent shall, at the close of each month, present to the board of trustees a written report, showing the general condition of the school, the number of inmates in attendance, the number of tickets of leave granted and such other information, together with such suggestions and recommendations, as may be to the best interests of the school. He shall have charge of all property belonging to the school, and shall keep an account of all monthly expenditures, and the receipts shall be certified to the president of the board with the social condition of each inmate at the time of committal.

Historical: Laws 1902, 12, Sec. 12.

Religious Services.

Sec. 816 The superintendent shall provide for the holding of religious services on the Sabbath day for the inmates of said school, but no sectarian views shall control the services.

Historical: Laws 1903, 12, Sec. 13.

State Superintendent to Prescribe Studies.

Sec. 817. The State Superintendent of Public Instruction shall prepare courses of study for all grades in the school.

Historical: Laws 1903, 12, Sec. 14.

School Constitutes an Independent District.

Sec. 818. The said school with all appurtenances thereto shall be, and it is hereby declared to be, an independent school district, and it shall not be taxed for other school purposes.

Historical: Laws 1903, 12, Sec. 15.

Reports to Governor.

Sec. 819. The president and secretary of the board of trustees shall, on the first day of January and July of each year, transmit to the Governor of the State a full written report of the doings of said board of trustees, the progress and condition of said school, together with a full report of the expenditures and receipts for the previous six months, setting forth each item in full with the date thereof, and such recommendations as they deem proper for the good of the school. They shall submit, on the first day of December of each biennial year, a printed report of all proceedings for the last biennial period: *Provided*, Failure to file a printed report as required shall mean forfeiture of bond.

Historical: Laws 1903, 12, Sec. 17.
Cross Reference: Reports of officers
and boards: Sec. 279.

School to Be Non-Sectarian.

Sec. 820. The board of trustees, in their regulations, and the superintendent and assistants, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian test shall be applied in the selection of teachers, and none shall be adopted in the school.

Historical: Laws 1903, 12, Sec. 18.

Land to Be Set Aside for School.

Sec. 821. The State Board of Land Commissioners are hereby directed, and it is made their duty, to set aside forty thousand acres of land granted to the State of Idaho by the act of Congress entitled "An act to provide for the admission of the State of Idaho into the Union," approved July 3rd, 1890, for other State charitable, educational or penal and reformatory purposes, for the exclusive use and benefit of said school. Said lands shall be held and disposed of, and the proceeds thereof used and applied, for the benefit of said school, subject to the provisions of said admission act and the Constitution of the State of Idaho, and, so far as may be practicable, in conformity with the established procedure of holding, disposing of and applying the proceeds of lands granted to the common schools of the State of Idaho. The State Board of Land Commissioners are directed to set aside forty thousand acres of land, if selected, and if not selected, to use the utmost dispatch in selecting and setting aside the same. The State Board of Land Commissioners are hereby directed to provide separate record books, in proper form, to be known as "Idaho Industrial Training School Records," in which shall be kept all records of matters relating to said lands.

Historical: Laws 1903, 12, Sec. 19; amended Laws 1903, 291, Sec. 1.	visions governing the sale of lands: Art. 9, Sec. 8.
Cross Reference: Constitutional pro-	

Courses of Study.

Sec. 822. All juveniles sent to the Idaho Industrial Training School shall be taught the common school branches, as taught in the common schools of Idaho, together with such industrial and manual training in the boys' department, and domestic sciences in the girls' department, that the boys and girls shall be enabled to earn a living after being discharged therefrom.

Historical: Laws 1903, 12, Sec. 27.

ARTICLE 2.
COMMITMENT OF DELINQUENTS.

Section	Section
823. Grounds for commitment.	828. Commutation of Penitentiary to Training School sentence.
824. Form of commitment.	829. Parole of inmates.
825. Conveyance to school.	830. Arrest of fugitives.
826. Proceedings in chambers: Review by Supreme Court.	831. Aiding escape of inmate.
827. Term of commitment: Discharge.	832. Commitment pending trial.

Note: Commitment of juvenile delinquents by probate court: Secs. 8333, 8336b.

Grounds for Commitment.

Sec. 823. When any boy or girl of sane mind, between the ages of eight and eighteen years, shall, in any court of record, or by any Judge of the District Court of this State, be found guilty of any felony except murder or manslaughter, the court or judge may, if in his opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered for such boy or girl to be sent to the Idaho Industrial Training School, in pursuance of the provisions of this chapter, and all acts amendatory thereof. A copy of such order, under the seal of the court, accompanied by a certificate of health, shall be sufficient warrant for carrying such boy or girl to such school, and for his or her commitment to the custody of the superintendent thereof. No boy or girl shall be committed to said school who is not of sound intellect, free from cutaneous or other contagious disease, or who is subject to epileptic or other fits, and he or she must possess that degree of bodily health which would render him or her a fit subject for the discipline of such school. And it shall be the duty of the court or judge, committing such boy or girl to said school, to cause him or her to be examined by a reputable licensed physician who shall certify to the above facts, which certificate shall be forwarded to said school with the commitment.

Historical: Laws 1903, 12, Sec. 28 and first paragraph of Sec. 31, amended Laws 1905, 432, Secs. 1, 4.

Form of Commitment.

Sec. 824. The commitment may, in general terms, be in the following form:

In the District Court of theJudicial District of the State of Idaho, in and for County.

State of Idaho,.....County, ss.

Be it remembered that on the day of, 19...,, a minor of said county under the age of eighteen years, was charged with the crime of, and upon trial was convicted of said offense. And after an examination the court finds that said is a suitable person to be committed to the instruction and discipline of the Idaho Industrial Training School.

And I further find that the saidis a resident of said County, and will be years of age on the day of, 19.... That his father's name is, and that his residence isand by occupation is That his mother's name is; that her residence is, and by occupation is

I further find and hereby certify that said resided with, in County, in the State of Idaho, when arrested for said offense. The facts in relation to said matter are as follows:

.....

That aside from his father and mother, the names of his next near relatives and their residences are as follows:

.....

Now, therefore, in view of the premises aforesaid, and the judgment of conviction entered herein, it is hereby ordered that saidbe, and he is hereby committed to the Idaho Industrial Training School, located at St. Anthony, in the State of Idaho, until he attains the age of twenty-one years, or until he is legally discharged by the board of trustees of said school.

I therefore command you,, that you take such boy (or girl) and deliver him (or her) without delay to the superintendent of said school, or any other person in charge thereof.

Witness my hand this day of, 19....
.....
District Judge.

State of Idaho, County, ss.
I, clerk of the District Court of the Judicial District of the State of Idaho; in and forCounty, do hereby certify that the Hon., whose signature is appended to the foregoing order of commitment, was at the date thereof, and now is, the Judge of the District Court in and for said District.

In witness whereof I have hereunto set my hand and affixed the seal of said court this day of, A. D. 19....

(Seal) Clerk, District Court.

Historical: Laws 1903, 12, Sec. 31;
amended Laws, 1905, 432, Sec. 4. Last
part of section.

Conveyance to School.

Sec. 825. The said court, or the judge thereof, shall appoint or designate the sheriff of said county, or some other person, to take such boy or girl, and deliver him or her without delay to the superintendent of said school, or other person in charge thereof at the place where the same is located, and the issuing of such certificates, for the purposes of this chapter, shall be conclusive evidence of his or her residence and age. The expenses of conveying said boy or girl to said institution shall be paid as in the case of convicts conveyed to the Penitentiary of the State of Idaho.

Historical: Laws 1903, 12, Sec. 32;
amended Laws 1905, 432, Sec. 5.

Proceedings in Chambers: Review by Supreme Court.

Sec. 826. The Judge of any District Court in the State may, either in chambers or in term time, proceed under the provisions of this article: *Provided*, That any proceedings had before the Judge in chambers in any county at a time when the District Court is not in session, shall be entered and recorded in the minutes of said court on the first day of the next ensuing term. Any and all proceedings before the District Court, or Judge thereof, may be reviewed on writ

of error by the Supreme Court, in the manner provided by law for reviewing criminal cases in said Supreme Court.

Historical: Laws 1903, 12, Sec. 33.

Cross Reference: Review of crimi-

nal cases in the Supreme Court: Secs. 8040-8077.

Term of Commitment: Discharge.

Sec. 827. Each boy or girl committed to the Idaho Industrial Training School shall remain there until he or she arrives at the age of twenty-one years, unless paroled, or legally discharged: *Provided*, That it shall be lawful for the board of trustees, upon the recommendation of the superintendent of said school, to discharge any boy or girl, an inmate thereof, who has arrived at the age of eighteen years, if it be made to appear that while there as an inmate, he or she deported himself or herself in such a manner as to make it reasonably probable that he or she has reformed, and is a proper person to be discharged.

Historical: Laws 1903, 12, Sec. 34.

Commutation of Penitentiary to Training School Sentence.

Sec. 828. Whenever any boy or girl, under the age of eighteen years, has been sentenced by any court of competent jurisdiction to imprisonment in the State Penitentiary, it shall be lawful for the State Board of Pardons, upon the application of such boy or girl, his or her parents or guardian, to commute such punishment by substituting therefor commitment of such boy or girl to the Idaho Industrial Training School during the minority of such boy or girl, unless sooner discharged by the board of trustees, under regulations as herein provided. But should a boy or girl, after being sent to such school, persist in a depraved course, or escape therefrom, it shall be in the power of the Governor, by and with the approval of the Board of Pardons, to revoke such commutation, and remand him or her to the State Penitentiary to serve out his or her unexpired term, and the time so spent by him or her at the said school, while a refugee therefrom, shall not be considered as a part of his or her original commitment.

Historical: Laws 1903, 12, Sec. 35.

Parole of Inmates.

Sec. 829. The board of trustees may, at any time, if a boy or girl has been in the Idaho Industrial Training School for a period of one year, discharge or release such boy or girl on trial or parole, but in all cases where a boy or girl is released on trial or parole, he or she must, at stated intervals, report his or her conduct to the superintendent, and present certificates of good behavior, whereupon his or her leave may be extended. It shall be the duty of the superintendent to recall any boy or girl who might not be conducting himself or herself properly, or any boy or girl who may not have a suitable home.

Historical: Laws 1903, 12, Sec. 36.

Arrest of Fugitives.

Sec. 830. Any fugitive from said institution may be arrested and returned to said institution by any officer or citizen.

Historical: Laws 1903, 12, Sec. 37.

Aiding Escape of Inmate.

Sec. 831. If any officer or employee of said school, or any other person, shall contrive, procure, and connive at, or otherwise voluntarily suffer, the escape of any inmate of said school, every such person, on conviction thereof, shall be punished by imprisonment in the State Penitentiary for a period of not less than six months, nor more than two years, and be fined in a sum not exceeding one thousand dollars.

Historical: Laws 1903, 12, Sec. 38.

Commitment Pending Trial.

Sec. 832. In case any boy or girl is held to the District Court upon a preliminary examination for a felony, by either a justice or probate court, such justice or probate court, before committing said boy or girl to the jail of said county, in case an undertaking for the appearance of said boy or girl to the District Court, shall not be given as provided by law, shall certify said facts to the Judge of the District Court of said district, who may make an order that said boy or girl be committed to the Idaho Industrial Training School to await trial for said offense, in lieu of committing said boy or girl to the jail of said county.

Historical: Laws 1903, 12, Sec. 42;
amended Laws 1905, 432, Sec. 6.

CHAPTER 5.

LAW LIBRARIES.

Section

- 833. Control of State Library.
- 834. Appointment and duties of librarian.
- 835. Disbursement of funds.
- 836. Bond of librarian.
- 837. Use and abuse of library.

Section

- 838. Location of library: Insurance.
- 839. Library fund.
- 840. Clerks to report names of new attorneys.
- 841. Lewiston law library.
- 842. Same: Support of library.

Control of State Library.

Sec. 833. The Justices of the Supreme Court of this State shall have the control and management of the State Library, and shall make such rules and regulations respecting the same as they deem best.

Historical: Laws 1899, 134, Sec. 1;
re-enacting Laws 1890-91, 197, Sec. 1.

Appointment and Duties of Librarian.

Sec. 834. They shall appoint a librarian, at a salary of nine hundred dollars per year, and such librarian must keep the library open every day, except Sundays and legal holidays, while the Supreme Court and the Legislature, or either, may be in session, from nine o'clock a. m. until nine o'clock p. m., and on all other days, except Sundays and legal holidays, from nine o'clock a. m. until five o'clock p. m.

Historical: Laws 1890-91, 197, Sec. 2; amended Laws 1893, 79, Sec. 1; | amended Laws 1899, 134, Sec. 2;
amended Laws 1899, 376, Sec. 1.

Cross Reference: Distribution of
Supreme Court Reports: Sec. 226.

Receipt to printer for reports: Sec.
229.

Disbursement of Funds.

Sec. 835. The said Justices shall have the management of all funds belonging to or appropriated for the use of the State Library, and expend and disburse the same for the benefit thereof, as in their judgment may be best; and upon demand of said Justices, or any two of them, the State Auditor shall draw his warrants upon the State Treasurer for such sum or sums as there may be in the Treasurer's hands belonging to or appropriated for the use of said library.

Historical: Laws 1899, 134, Sec. 3;
re-enacting Laws 1890-91, 197, Sec. 3.

Bond of Librarian.

Sec. 836. The librarian of the State Library shall give a bond, with sufficient sureties, to be approved by one or more of the Justices of the Supreme Court, in the sum of two thousand dollars conditioned for the faithful performance of his duties and the preservation of the books in said library.

Historical: Laws 1899, 134, Sec. 4;
re-enacting Laws 1890-91, 197, Sec. 4.
Omitting the last half of the section
which authorized the librarian to sell
the Supreme Court reports in posses-

sion of the State, as superseded by
Laws 1903, 367, Sec. 5 (Codes, Sec.
226, which merely authorizes the li-
brarian to distribute such reports as
therein provided.

Use and Abuse of Library.

Sec. 837. Any person may have access to and may use the books in said library, under such restrictions as the Justices of the Supreme Court may prescribe. Any person who shall violate any rule established for the management of said library may be denied the privileges of said library. Any person who shall wantonly mutilate or destroy any book or any article of furniture, or any pamphlet or paper belonging to said library, shall be deemed guilty of a misdemeanor, and be punished accordingly. Any person who fails to return to the library any book taken therefrom by him, within the time prescribed by the rules of said library, shall be liable to the librarian in three times its value, to be recovered in a civil action; and if such person be an officer or employee of the State, the same shall be withheld from his pay.

Historical: Laws 1899, 134, Sec. 5;
re-enacting Laws 1890-91, 197, Sec. 5.

Location of Library: Insurance.

Sec. 838 The State Library shall be kept in the Capitol building, and the Justices of the Supreme Court shall cause the same to be fully insured against loss or destruction by fire.

Historical: Laws 1899, 134, Sec. 6;
re-enacting Laws 1890-91, 197, Sec. 6.

Library Fund.

Sec. 839. The state Library fund consists of all moneys paid to the State Treasurer for the use of said fund by attorneys at law

upon their admission to the practice, as required by the Code of Civil Procedure, and any other moneys and fees required by law to be paid into said fund, and the annual sum of one hundred and fifty dollars, which is hereby appropriated annually out of the State Treasury to said fund.

Historical: Rev. St. 1887, Sec. 807.
See 5 Ter. Ses. (1869) 96, Sec. 1.

California Legislation: See Pol. Code 1872, Sec. 2300; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Fees received from notaries applicable to fund: Sec. 233.

Clerks to Report Names of New Attorneys.

Sec. 840. The clerk of the Supreme Court and the several clerks of the District Courts must annually report to the State Treasurer the names of all attorneys admitted or licensed to practice in the courts of which they are clerks respectively.

Historical: Rev. St. 1887, Sec. 809.
See 5 Ter. Ses. (1869) 96, Sec. 2.

Lewiston Law Library.

Sec. 841. A Supreme Court building and a Library for the State of Idaho is hereby established and located in the City of Lewiston, in the County of Nez Perce, for the use of the Supreme Court of the State. The care, custody and keeping of said library shall be committed to the deputy clerk of the Supreme Court located at Lewiston, Idaho, under rules and regulations to be prescribed by the Justices of the Supreme Court from time to time.

Historical: Laws 1903, 42, Secs. 1, 10. Omitting such part of Sec. 10 as looked to the future completion of the building and library. The provisions of the act from which this and the following sections are taken,

relating to the erection of the Supreme Court building, are omitted from these Codes as now obsolete. The sections providing for the issuance of bonds are preserved by Sec. 17; Subd. 39.

Same: Support of Library.

Sec. 842. All fees hereafter received by the State of Idaho from notaries public and attorneys at law residing in the Counties of Shoshone, Kootenai, Bonner, Latah, Nez Perce and Idaho, and counties to be hereafter created therefrom, or from any part thereof, shall be set apart and held by the State Treasurer to be expended for the use and benefit of said library, under the orders of the Justices of the Supreme Court. Duplicates of all laws, pamphlets and other publications hereafter made by or under authority of the State of Idaho, or any of its agencies, shall be sent to said library. At least one copy of such publications heretofore made shall be furnished said library: *Provided*, There be copies thereof in possession of the State not heretofore appropriated. Henceforth the State of Idaho shall make sufficiently liberal exchange with other States, Territories and countries, of such publications to be made by or under its authority, as may be necessary to secure copies of similar publications of such States, Territories and countries, for the said library, as well as for the State Library at Boise.

Historical: Laws 1903, 42, Sec. 11.

CHAPTER 6.

HISTORICAL SOCIETY.

Section

- 843. Creation of society authorized.
- 844. Duties of society.
- 845. Acceptance of chapter.
- 846. Society to be trustee.
- 847. Delivery of property to Governor.
- 848. Appointment and powers of trustees.

Section

- 849. Duties of librarian.
- 850. Duties of trustees.
- 851. Salary and expenses of librarian.
- 852. Expenses of trustees.
- 853. Rules and regulations.

Note: The resolution of acceptance referred to in Section 845 of this chapter has been passed, and the property of the society delivered to the State as provided for in Section 847. Consequently much of this chapter is obsolete in its present form. It was thought, however, that the relation of the society to the State, and its legal status, would be best explained by leaving the body of the chapter unchanged.

Creation of Society Authorized.

Sec. 843. The Historical Society of Idaho Pioneers, a corporation organized and existing under and by virtue of the laws of the State of Idaho, may become the Historical Society of the State of Idaho, upon the conditions hereinafter specified in this chapter.

Historical: Laws 1907, 265, Sec. 1.

Duties of Society.

Sec. 844. It shall be the duty of said society:

1. To collect books, maps, charts, pictures, and other papers and materials illustrative of the history of this State in particular, and generally of the Northwest;
2. To procure from pioneers narratives of their exploits, perils and adventures;
3. To procure facts and statements relative to the history, progress, and decay of the Indian tribes within the State;
4. To collect and preserve fossils, specimens of ores and mineral object curiosities connected with the history of the State, and all such books, maps, writings, charts, or other material as will tend to facilitate historical, scientific and antiquarian research;
5. To bind, catalogue, and carefully preserve all unbound books, manuscripts, pamphlets, and especially newspaper files containing legal notices, now in its possession or which it may hereafter receive;
6. To biennially prepare for publication a report of its collections, and such other matters relating to the transactions of the society as may be useful to the public;
7. To keep its rooms open at reasonable hours on business days, for the reception of the citizens of this State and others who may wish to visit the same.

Historical: Laws 1907, 265, Sec. 2.

Acceptance of Chapter.

Sec. 845. As a condition precedent to securing the benefits of this chapter, it shall be necessary for said Historical Society of Idaho Pioneers, by and through its duly elected, qualified and acting board

of directors, to signify its acceptance of the benefits of this chapter, by a resolution accepting the terms herein contained, and in addition thereto, donating to the State of Idaho all its books, papers, relics, and other property then owned by it.

Historical: Laws 1907, 265, Sec. 3.

Society to Be Trustee.

Sec. 846. From and after the adoption of said resolution of acceptance and donation provided for in the preceding section, and its presentation, together with the property of the society, to the Governor, as hereinafter provided, said society shall be the trustee of the State of Idaho.

Historical: Laws 1907, 265, Sec. 4.

Delivery of Property to Governor.

Sec. 847. In the event the said corporation elects, by resolution, to accept the terms of this chapter, it shall make such election known by presenting a duly authenticated copy of said resolution to the Governor of the State of Idaho, accompanying such resolution by a delivery of all the books, papers, relics, and other property then owned by said corporation.

Historical: Laws 1907, 265, Sec. 5.

Appointment and Powers of Trustees.

Sec. 848. Within ten days after the presentation of the resolution and the delivery of property mentioned in the preceding section, it shall be the duty of the Governor to appoint a board of three trustees, who shall have exclusive control of the property acquired from said corporation, managing and conserving the same for the use and benefit of the State of Idaho, for the purposes in this chapter hereinbefore recited, and who shall have authority under this chapter to employ the services of a librarian.

Historical: Laws 1907, 265, Sec. 6.

Duties of Librarian.

Sec. 849. It shall be the duty of the librarian, by and under the direction of the board of trustees, to do and perform, or to procure to be done and performed, all the acts specified in Section 844.

Historical: Laws 1907, 265, Sec. 7.

Duties of Trustees.

Sec. 850. It shall be the duty of the trustees to faithfully expend and apply all money received by the State of Idaho, to the uses and purposes directed by law, and they shall hold all its present and future collections and property for the State, and shall not sell, mortgage, transfer or dispose of in any manner, or remove from the capitol, any article thereof, or any part of the same, without authority of law or the consent of the Legislature: *Provided*, That this section shall not be construed to prevent the sale or exchange of any duplicates the society may have or obtain.

Historical: Laws 1907, 265, Sec. 8.
"Commissioners" changed to "trus-

tees" to conform to the remainder of the chapter.

Salary and Expenses of Librarian.

Sec. 851. For such services the librarian shall be paid a salary of one thousand dollars per annum, and shall receive actual and necessary expenses incurred while performing the duties prescribed in this chapter: *Provided*, The aggregate sum of such expenses shall not exceed the sum of five hundred dollars in two years.

Historical: Laws 1907, 265, Sec. 9.

Expenses of Trustees.

Sec. 852. For their services as trustees, the members of the board of trustees shall receive their actual and necessary expenses incurred in the discharge of their duties, including traveling and maintenance expenses, while attending or going to and from meetings of the board: *Provided*, That the aggregate sum of said expenses shall not exceed the sum of two hundred and twenty-five dollars per annum for said board.

Historical: Laws 1907, 265, Sec. 10.

Rules and Regulations.

Sec. 853. The said board of trustees shall adopt such rules and regulations as may be necessary to discharge the duties of their said trust.

Historical: Laws 1907, 265, Sec. 11.

CHAPTER 7.**GRAND ARMY HEADQUARTERS.****Section**

854. Rooms to be set apart.

855. Title to property to vest in State.

Section

856. State to pay expenses.

Rooms to Be Set Apart.

Sec. 854. There shall be set apart a suitably furnished room or rooms in the State House, or in some other public building in the City of Boise, which room or rooms shall be under the charge of the commander of the Grand Army of the Republic, Department of Idaho, and of the assistant adjutant general of said department, and their successors in office. Said room or rooms shall be used by said officers for the purpose of headquarters; for storing the supplies and property of the department; for storing and exhibiting relics and mementoes of the Civil War, and for arranging and preserving the history of citizens of this State who served in the army, navy or marine corps of the United States during the Civil War, and any other literature which said department of the Grand Army of the Republic may collect and desire to preserve as a part of the history of this State. Such records and exhibits shall be accessible at all times, under suitable rules and regulations, to members of the Grand Army of the Republic, and others engaged in collecting historical information, and to persons desirous of viewing said exhibits.

Historical: Laws 1907, 152, Sec. 1.

Title to Property to Vest in State.

Sec. 855. The books of record, papers, relics, mementoes and other

effects of whatever nature, belonging to the said Department of Idaho of the Grand Army of the Republic, shall, whenever said department ceases to exist as a department organization, become the property of the State.

Historical: Laws 1907, 152, Sec. 2.

State to Pay Expenses.

Sec. 856. The State hereby assumes the expenses of printing and postage and traveling expenses incurred by the Department of Idaho of the Grand Army of the Republic, in carrying out the objects and purposes set forth in Section 854 of this chapter: *Provided*, That said expenses shall not exceed the amount of three hundred dollars in any one year; and also the expenses of maintaining and furnishing the headquarters provided for in Section 854 of this chapter, including the salary of the assistant adjutant general, who shall have charge of such headquarters: *Provided*, That said expenses, including said salary, shall not exceed the amount of six hundred dollars in any one year.

Historical: Laws 1907, 152, Secs. 3,
4. Re-written in combination.

CHAPTER 8.

STATE FISH HATCHERY.

Section	Section
857. Warden to erect and maintain hatchery.	860. Warden to report to Governor.
858. Selection and purchase of site.	861. Examination and stocking of streams.
859. Warden to supervise fish and game culture.	862. Superintendent and assistants: Appointment and salary.

Warden to Erect and Maintain Hatchery.

Sec. 857. The State Fish and Game Warden is hereby authorized and directed, without further compensation than that provided by law, to erect and maintain a fish hatchery in this State, for the purpose of the artificial propagation and distribution of food and commercial fishes, and for the purpose of raising and distributing game birds and such game animals as can be reasonably raised on the premises occupied by such hatchery.

Historical: Laws 1907, 299, Sec. 1. The phrase "without further compen-

sation," etc., is transposed to conform to grammatical construction.

Selection and Purchase of Site.

Sec. 858. The said hatchery shall be located in Blaine County, Idaho, opposite the railroad siding known as Hay Spur, and on the waters of Silver Creek, on the land purchased and selected for that purpose by the Governor and State Fish and Game Warden; and the hatchery may be erected over and upon any waters in the State which flow over, across or upon the land so selected for such hatchery.

Historical: Laws 1907, 299, Sec. 2. Re-written to conform to the actual location of the hatchery, which has been accomplished. The provision

for the purchase of a dwelling house for the superintendent is also omitted, as such house has been provided.

Warden to Supervise Fish and Game Culture.

Sec. 859. The State Fish and Game Warden shall have supervision over all fish culture matters of a public nature, and shall receive and provide for the proper care and distribution of such food fishes or ova of the same, and such game birds and animals, as shall come into the possession of the State. He may also obtain ova or fry from such fish at such places and of such variety as he may deem most suitable to the waters of this State, and have the same hatched at the State hatchery; and he shall distribute the same in a prudent and equitable manner throughout the different waters of the State.

Historical: Laws 1907, 299, Sec. 3.

Warden to Report to Governor.

Sec. 860. The State Fish and Game Warden shall annually, before the first day of December, make to the Governor a detailed report of the transactions of the year, and set forth in said report any and all information he may have obtained in regard to the varieties of fish adapted to the waters of this State, or method of culture of the same, the water to which they are adapted, the number of fish hatched and where distributed and in what waters placed, together with any and all information that may aid in promoting the culture of edible fish in this State.

Historical: Laws 1907, 299, Sec. 4.

Cross Reference: Reports of Officers: Sec. 279.

Examination and Stocking of Streams.

Sec. 861. The State Fish and Game Warden may examine the waters of the State that are not naturally stocked with fish, as to their adaptability for fish, and stock the same, if suitable, with the varieties of fish that are best adapted to the waters.

Historical: Laws 1907, 299, Sec. 5.

Superintendent and Assistants: Appointment and Salary.

Sec. 862. The State Fish and Game Warden shall appoint the superintendent and such assistants as may be necessary. The salary of the superintendent shall not exceed twelve hundred dollars per annum, and that of the assistants shall not exceed seventy-five dollars per month.

Historical: Laws 1907, 299, Sec. 7.
Omitting the concluding clause prescribing the cost of the superintend-

ent's dwelling as obsolete, said dwelling having been constructed.

CHAPTER 9.**PURCHASE OF SUPPLIES FOR INSTITUTIONS.****Section**

863. Purchases and contracts to be by advertisement.

864. Estimates of supplies: Advertisements: Contracts.

Section

865. Submission of estimates to Governor.

866. Application of chapter.

Purchases and Contracts to Be by Advertisement.

Sec. 863. All purchases and contracts for supplies for any of the

public institutions of the State, where the public exigencies do not require the immediate delivery of the articles, shall be by advertising a sufficient time previously for proposals for supplying the same.

Historical: Laws 1905, 38, Sec. 1.

Estimates of Supplies: Advertisements: Contracts.

Sec. 864. At least one month previous to the first day of January, April, July and October, respectively, the directors of the Idaho Insane Asylum, and the trustees of the Idaho Industrial Training School, shall each meet and determine the supplies that may be necessary for their respective institutions for three months, except such articles as may be perishable and cannot be kept. Said boards shall designate clearly the quantity and quality of the articles required for their respective institutions, and advertise, for ten days in some daily newspaper published at the capital, having general circulation in the State, also for two consecutive weeks in one or more newspapers published in this section of the State where any of such institutions shall be located, before the first day of January, April, July and October, respectively, for sealed proposals for furnishing said articles for each institution, separately, to be delivered at the institution within ten days after the first day of the months aforesaid: *Provided*, That the board may permit the delivery of goods monthly, if in their judgment it be deemed best. The bids which propose to furnish supplies for said institutions at the lowest rate shall be accepted for such institution by the respective boards: *Provided, further*, That no proposals shall be considered by said boards unless the same be accompanied by a bond with such security as the said boards shall respectively determine, with condition to furnish said articles as proposed in said bid: *Provided, further*, That said boards may let a contract or contracts for furnishing any of said supplies to any of said institutions for any period not exceeding one year, beginning April first, if, in their judgment, it would be for the best interest of the State so to do.

Historical: Laws 1905, 38, Sec. 2.

Submission of Estimates to Governor.

Sec. 865. The said boards, and each of them, shall, before advertising for bids for furnishing any such supplies, submit the list thereof to the Governor, Secretary of State and Attorney General, who shall act as a board for the purpose of passing upon and revising such lists, with power to strike therefrom any article or articles not deemed by them necessary for such institutions, and to change such lists, and said lists shall be published as revised by said last named board.

Historical: Laws 1905, 38, Sec. 3.

Application of Chapter.

Sec. 866. This chapter shall not apply to the State Normal Schools, State University or Academy of Idaho.

Historical: Laws 1905, 38, Sec. 4.

TITLE 7

PUBLIC WAYS

Chapter

1. Floating timber.
2. Highways.
3. Toll roads.
4. Public ferries and toll bridges.

Chapter

5. Miscellaneous provisions relating to toll roads, bridges and ferries.
6. Good road districts.
7. State Highway Commission.

CHAPTER 1.

FLOATING TIMBER.

Section

867. Definition of timber.
868. Reclamation by owner.
869. Sale by sheriff.
870. Application of proceeds.

Section

871. Same: When claim is rejected.
872. Construction of dams and booms.
873. Booms and weirs are nuisances.

Definition of Timber.

Sec. 867. The word "timber" is used in this chapter to designate all logs, boards, planks, lumber, railroad ties, poles, rails, posts, cordwood or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called driftwood.

Historical: Rev. St. 1887, Sec. 830.

California Legislation: Similar, but "lumber" for "timber," line 1: Pol.

Code 1872, Sec. 2389; Deering's Code, ib.; Kerr's Code, ib.

Reclamation by Owner.

Sec. 868. Whenever any timber drifts upon any island in any of the waters of this State, or upon the bank of any such waters, the owner of the timber may remove it on paying or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear the proofs and determine the same at the expense of the owner of the timber.

Historical: Rev. St. 1887, Sec. 831.
See 13 Ter. Ses. (1885) 177, Sec. 1.

California Legislation: Same except

"lumber" for "timber" throughout:
Pol. Code 1872, Sec. 2390; Deering's Code, ib.; Kerr's Code, ib.

Sale by Sheriff.

Sec. 869. If the owner of such timber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the timber, to the sheriff of the county, and thereafter the sheriff must sell the same after three days' notice in three public places of the precinct.

Historical: Rev. St. 1887, Sec. 832.
California Legislation: Similar: Pol.

Code 1872, Sec. 2391; Deering's Code, ib.; Kerr's Code, ib.

Application of Proceeds.

Sec. 870. When sold, the proceeds of the timber must be applied, first, to the payment of the charges of the sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the probate judge, and on his order therefor made within one year after its receipt.

Historical: Rev. St. 1887, Sec. 833.

California Legislation: Same except "county" for "probate" judge, and "lumber" for "timber: Pol. Code 1872.

Sec. 2392; Superior Court system as amended: Deering's Code, ib.; Kerr's Code, ib.

Same: When Claim Is Rejected.

Sec. 871. The rejection by the probate judge of any claimant's right to such proceeds is conclusive, unless, within six months thereafter, he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the county treasurer, be placed in the common school fund of the county.

Historical: Rev. St. 1887, Sec. 834.

California Legislation: Same except "county" for "probate" judge: Pol.

Code 1872, Sec. 2393; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Construction of Dams and Booms.

Sec. 872. No dam or boom must be hereafter constructed or permitted on any creek or river, unless said dam or boom has connected therewith a sluiceway, lock or fixture sufficient and so arranged as to permit timber to pass around, through or over said dam or boom without unreasonable delay or hindrance.

Historical: Rev. St. 1887, Sec. 835.
 See 13 Ter. Ses. (1885) 177, Sec. 6.

Construction of Dam: This section prohibits the construction of any dam or boom, on any creek or river, which

will unreasonably delay or hinder the passage of floating timber down the same. *Potlatch Lbr. Co. v. Peterson* (1906) 12 Ida. 769; 68 Pac. 426.

Booms and Weirs Are Nuisances.

Sec. 873. Any boom or weir in or over any creek or river so constructed as to prevent the passage of logs or lumber, is a public nuisance, which may be abated unless a suitable sluiceway, lock or passage be made thereon, within thirty days after written notice given by any person interested, and any person owning, holding or occupying such boom or weir is liable to pay five dollars for every day the same remains in or over said creek or river, after thirty days' notice to remove the same, and is liable for any damages sustained by individuals by reason of said boom or weir.

Historical: Rev. St. 1887, Sec. 836;
 13 Ter. Ses. (1885) 177, Sec. 7.

Obstructions Are Nuisances: One who constructs a boom or obstruction across a navigable stream in such a way as to prevent others driving logs

past the boom of obstruction, is liable to an action to abate the same as a nuisance and for damages caused by its maintenance. *Powell v. The Springston Lbr. Co.* (1906) 12 Ida. 723; 88 Pac. 97.

CHAPTER 2.

HIGHWAYS.

Article

1. Enumeration of highways.
2. Rules and restrictions on use of highways.
3. Powers of commissioners and highway officers.
4. Highway taxes.
5. Highway labor and commutation.

Article

6. Laying out, altering and discontinuing highways.
7. Erection and maintenance of bridges.
8. Obstructions and injuries to highways.
9. Leasing highways.

ARTICLE 1.

ENUMERATION OF HIGHWAYS.

Section

874. Highways defined.
875. Recorded and worked highways.

Section

876. Abandonment of highways.
877. Record of highway proceedings.

Highways Defined.

Sec. 874 Highways are roads, streets or alleys, and bridges, laid out or erected by the public, or if laid out or erected by others, dedicated or abandoned to the public.

Historical: Rev. St. 1887, Sec. 850.

California Legislation: Same: Pol. Code, 1872, Sec. 2618; similar: Deering's Code, ib.; Kerr's Code, ib.

Unauthorized Dedication: A private

land owner has no power to dedicate to the public any portion of the railroad's right of way. *Palmer v. Northern Pac. Ry. Co.* (1905) 11 Ida. 583; 83 Pac. 947.

Recorded and Worked Highways.

Sec. 875. Roads laid out and recorded as highways, by order of the board of commissioners, and all roads used as such for a period of five years, provided the latter shall have been worked and kept up at the expense of the public, or located and recorded by order of the board of commissioners, are highways. Whenever any corporation owning a toll bridge, or a turnpike, plank, or common wagon road is dissolved, or discontinues the road or bridge, or has expired by limitation, the bridge or road becomes a highway.

Historical: Rev. St. 1887, Sec. 851; amended Laws 1893, 12, Sec. 1; re-enacted Laws 1899, 168, Sec. 2.

Highways by Prescription: A highway by prescription exists by virtue of user and not on the theory of a grant or dedication. Thus it may be acquired over open and uninclosed land although the owner has no desire to use the land over which the same runs. *Gross v. McNutt* (1895) 4 Ida. 300; 38 Pac. 936.

Same—Necessity of Work: Under this section, prior to the amendment of 1893, roads used as such for a period of five years were highways, but subsequent to the amendment, five years' use and work by the proper

authorities is required to constitute a public highway by prescription. *Town of Juliaetta v. Smith* (1906) 12 Ida. 288; 85 Pac. 923. It is not necessary that a highway be worked throughout its entire length at public expense to become a highway by prescription; it need not be worked at places where there is no necessity for working it. *Gross v. McNutt* (1894) 4 Ida. 286; 38 Pac. 935. A road cannot be deemed a public highway by user where it was constructed and kept in repair by a private land owner who maintained a gate across the same. *Palmer v. Northern Pac. Ry. Co.* (1905) 11 Ida. 583; 83 Pac. 947.

Abandonment of Highways.

Sec. 876. A road not worked or used for the period of five years ceases to be a highway for any purpose whatever.

Historical: Rev. St. 1887, Sec. 852.

California Legislation: Same: Pol. Code 1872, Sec. 2620; see Deering's Code, Sec. 2619; Kerr's Code, ib.

Cited: Gross v. McNutt (1895) 4 Ida. 300; 38 Pac. 936.

Record of Highway Proceedings.

Sec. 877. The clerk of the board of commissioners must keep a book in which must be recorded separately all proceedings of the board relative to each road district, including orders laying out, altering and opening roads; and in a separate book a description of each road district, its overseers, its roads, highways, contracts, and all other matters pertaining thereto.

Historical: Rev. St. 1887, Sec. 853.

California Legislation: Same except "supervisors" for "commissoners,"

line 1: Pol. Code 1872, Sec. 2621; see Deering's Code, Sec. 2622; Kerr's Code, ib.

ARTICLE 2.

RULES AND RESTRICTIONS ON USE OF HIGHWAYS.

Section

878. Public acquires only an easement.

879. Construction of sidewalks.

Section.

880. Owners may plant trees.

881. Corporations may lay tracks and water mains.

Public Acquires Only an Easement.

Sec. 878. By taking or accepting land for a highway, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land, are for the use of the owner or occupant of the land.

Historical: Rev. St. 1887, Sec. 860.

California Legislation: Same except the words "subject to the regulations in this and the Civil Code provided" added to first sentence: Pol. Code

1872, Sec. 2631; similar: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Abutting owner is presumed to own to the center of the way: Sec. 3091.

Construction of Sidewalks.

Sec. 879. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the board of commissioners and the overseers of highways; and any person using such sidewalk with horse or team without permission of the owner, is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby.

Historical: Rev. St. 1887, Sec. 861.

California Legislation: Same except "supervisors" for "commissioners,"

line 3; Pol. Code 1872, Sec. 2632; similar: Deering's Code, ib.; Kerr's Code, ib.

Owners May Plant Trees.

Sec. 880. Any owner or occupant of land adjoining a highway not less than three rods wide, may plant trees on the side contiguous to his land. They must be set in regular rows, at a distance of at least six feet from each other and not more than six feet from the boundary of the highway. If the highway is more than six rods wide, the row must not be less than six nor more than twelve feet from the boundary of the highway. Whoever injures any of them

is liable to the owner or to the occupant for the damage which is thereby sustained.

Historical: Rev. St. 1887, Sec. 862.
California Legislation: Same: Pol. Code 1872, Sec. 2633; similar: Deer-

ing's Code, ib.; similar as amended: Kerr's Code, ib.

Corporations May Lay Tracks and Water Mains.

Sec. 881. Every gas, water, or railroad corporation has power to lay conductors and tracks through the public ways and squares in any city, village, or town when it is established, with the consent of the municipal authorities thereof, and under such reasonable regulations, and for such compensation, as the authorities and the law prescribe.

Historical: Rev. St. 1887, Sec. 863.
California Legislation: Same except "and for such compensation," line 5,

omitted: Pol. Code 1872, Sec. 2634; repealed: Deering's Code, ib.

ARTICLE 3.

POWERS OF COMMISSIONERS AND HIGHWAY OFFICERS.

Section

- 882. Duties of commissioners.
- 882a. Same: Additional Duties.
- 883. Creation and alteration of road districts.
- 884. Election of road overseers.
- 885. Duties of road overseers.
- 886. Same: Collection of road poll tax.
- 887. General road fund.

Section

- 888. Contracts for repair of highways.
- 889. Duties of contractors.
- 890. Failure to perform contract.
- 891. Allowance of contractor's claims.
- 892. Collection of poll tax in contract districts.
- 893. Every city a road district.

Duties of Commissioners.

Sec. 882. The board of county commissioners, by proper ordinances, must:

1. Divide the county into a suitable and convenient number of road districts;
2. Cause to be surveyed, viewed, laid out, recorded, opened and worked, such highways as are necessary for public convenience, as in this chapter provided;
3. Cause to be recorded as highways such roads as have become such by use or abandonment to the public;
4. Abolish or abandon such as are unnecessary;
5. Contract, agree for, purchase or otherwise acquire, the right-of-way over private property for the use of public highways, and for that purpose institute, or require the county attorney to institute, proceedings under the Code of Civil Procedure, and to pay therefor from the district road fund of the particular district;
6. Let out by contract the improvement of highways, and construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds one hundred dollars: *Provided*, That at least twenty-five per cent of the fund collected in any road district must be expended within the district in which such fund was collected;
7. Levy a property road tax to be paid into the county road fund;

8. Cause to be erected and maintained on the highways they may designate, guide posts properly inscribed;

9. Cause the road tax provided for in subdivision seventh collected each year to be paid into the road fund and kept by the treasurer in a separate fund;

10. Audit and draw warrants on the road fund of the county required to pay for the right of way or improvement thereon;

11. Cause the overseers of the several road districts in their respective counties to return to the assessor and collector of the county, in the month of December in each year, a complete list of all persons in their respective districts who are delinquent for road poll taxes for that year, and cause the assessor and collector to charge the amount of such delinquent taxes upon the delinquent tax roll as other delinquent taxes are charged, and collect the same as other delinquent per capita taxes are collected: *Provided*, That from the time any delinquent road poll tax shall be so charged upon the delinquent tax roll of the county, the same becomes a lien upon all the property of the persons against whom charged, to the same extent that taxes levied for general State and county purposes become a lien thereon when delinquent.

Historical: Rev. St. 1887; Sec. 870. (See 13 Ter. Ses. (1885) 162, Sec. 17.) Amended Laws 1890-91, 190, Sec. 1; amended Laws 1893, 184, Sec. 1; amended Laws 1895, 143, Sec. 1; re-enacted Laws 1899, 127, Sec. 1; amended Laws 1901, 82, Sec. 1.

California Legislation: Similar: Deering's Pol. Code, Sec. 2643; as amended: Kerr's Code, *ib*.

Levy of Road Tax: The county commissioners have the exclusive right to levy a property road tax on property in towns or villages, although such towns and villages have the right, under Rev. St. Sec. 2238, to levy and collect taxes for general revenue purposes. *City of Genessee v. Latah Co.* (1894) 4 Ida. 141; 36 Pac. 701.

Same—Payment to Municipality: Where a town or village is a separate

road district, twenty-five per cent of the money realized on the property road tax levied by the county commissioners on property in such town or village must be turned over to said town or village to be expended by the town or village authorities. *ib*.

A municipality need not put in a claim for the percentage of road tax which should be paid to it, but such percentage should be paid without claim being made. *Village of Mountainhome v. Elmore Co.* (1904) 9 Ida. 410; 75 Pac. 65.

Defective Highways — Liability: County commissioners are not individually liable for injuries sustained by reason of defective highways. *Worden v. Witt* (1895) 4 Ida. 404; 39 Pac. 1114.

Same: Additional Duties.

Sec. 882a. It shall be the duty of each of the county commissioners of this State personally to visit and inspect all roads and highways in the commissioner's district from which he was elected, on or before the first Monday in February of each year, if practicable, or as soon thereafter as conditions will permit, and also on the first Monday in September of each year; and he shall give to the several road district overseers in the county specific instructions as to the work to be done therein, and shall ascertain if road contractors in his district are complying or have complied with the contracts. Said commissioners shall require the said overseers to keep and maintain all the roads in their several districts in good repair, and shall exercise full and complete authority over all roads and overseers of his district; they shall submit a report in detail at each quarterly meeting of the board of county commissioners of the work done and materials used in their several districts, and an approximate estimate

of the money needed for improvements upon the roads and highways therein for the ensuing quarter. Said commissioners shall meet in special session on the second Monday of May and September of each year, for the consideration of questions pertaining to the public roads of their respective districts, and each member of said board of county commissioners shall submit a report showing the conditions of the public roads and highways in his district, and the work needed, with an estimate of the cost to be incurred; and the board of county commissioners shall, at said special meetings, make provision for the necessary improvements on the public roads and highways of the county, and may also act upon any matters affecting the public roads and highways in their counties. Any county commissioner who shall wilfully or negligently fail to perform any of the duties or requirements herein contained, shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars, to be recovered upon his official bond by action brought by the prosecuting attorney of the county wherein said commissioner resides.

Historical: Laws 1907, 523, Secs. 1 and 2.

Creation and Alteration of Road Districts.

Sec. 883. The road districts must be carefully and distinctly defined and described; until such division is made the road districts of the various counties must continue as they are at present defined. Road districts may be altered, changed, created or modified by the board of commissioners, as occasion requires.

Historical: Rev. St. 1887, Sec. 871.
See 13 Ter. Ses. (1885) 162. Sec. 17.

California Legislation: Similar: Pol. Code 1872, Sec. 2648; repealed 1880.

Election of Road Overseers.

Sec. 884. The qualified electors of each road district in the several counties of the State shall meet on the first Monday in December of each year, at one o'clock p. m., and proceed to elect a road overseer. Notice of such election, and of the place of holding the same, may be given by any five of the qualified electors of the road district, by posting notices at least ten days previous to the time of holding such election, in at least three of the most public places in such road district. The place of holding such election shall be as nearly as practicable in the center of such road district. Said election shall be conducted in the same manner as school elections, and immediately after the assemblage of such electors, they shall elect a judge and clerk from their number, who shall serve as judge and clerk of such election without compensation. The candidate receiving the highest number of votes cast for such overseer at such election, shall be declared duly elected, and shall be so certified to the clerk of the board of county commissioners of the county, by the judge and clerk of such election. The clerk of the board of county commissioners shall prepare a certificate of election, in accordance with the returns so made, and the person receiving such certificate shall, before entering upon his duties as such road overseer, furnish a good and sufficient bond in the sum of three hundred dollars, in favor of the county, and approved by the board of county commissioners, and the said overseer, when such bond is approved, shall further, before entering

upon his duties, take and subscribe to the usual oath of office. In case of vacancy or of failure to elect such road overseer, the board of county commissioners shall, upon petition, appoint an overseer, who shall serve for the unexpired term. But for cause of neglect of duty, or for neglecting to care for tools or machinery belonging to the district, or upon a petition from said district, the board of commissioners may declare such office vacant, and the electors of said district shall elect another overseer as provided for in this section.

Historical: Laws 1899, 306, Secs. 1-5; re-enacting Laws 1897, 78, Secs. 1-5.

Duties of Road Overseers.

Sec. 885. Road overseers, under the direction and supervision and pursuant to orders of the board of commissioners, must:

1. Take charge of the public highways within their respective districts;
2. Keep them clear from obstructions and in good repair;
3. Cause banks to be graded, bridges and causeways to be made where necessary, keep the same in good repair, and renew them when destroyed;
4. Give two days' notice to the inhabitants of his road district liable to do work on roads, when, where, with what implements, and under whose direction to work, and superintend the same;
5. Collect, from each inhabitant notified to work and who fails to work or prefers to pay it, the commutation fee;
6. Make semi-annual reports of all labor performed in his district to the board of commissioners, under oath;
7. Receive and present petitions for new roads, recommend or disapprove the same, and assist in laying them out;
8. Collect all road poll taxes in the mode provided for the collection of other poll taxes, and faithfully account for and pay over the same;
9. Receive for his services, from money in the treasurer's hands belonging to the road fund, the sum of not less than two dollars and fifty cents, and not more than four dollars, for each day's service performed by him, to be fixed by the board of commissioners, annually, at their regular meeting in January, to be audited and ordered paid by the board of commissioners.

Historical: Laws 1899, 127, Sec. 2; re-enacting Laws 1890-91, 190, Sec. 2. Omitting the words "appointing them" after "commissioners" in the first paragraph. Road overseers are now elected as provided in the preceding section.

California Legislation: Similar: Deering's Pol. Code. Sec. 2642; as amended office of "road commissioner" substituted for "road overseer": Kerr's Code, ib.

Same: Collection of Road Poll Tax.

Sec. 886. Every road overseer is hereby authorized to demand payment of road poll tax from every person liable therefor, and on the refusal of such person to work or pay the same, he must collect the tax by seizure and sale of any personal property owned by such person. The sale may be made after five days' notice of time and place of such seizure and sale.

Historical: Laws 1899, 392, Sec. 1.

Additional Remedy: This section prescribes an additional remedy to that prescribed by Rev. St. Sec. 901 for the recovery of road poll taxes,

but does not repeal said Section 901 (Code Sec. 908). *Kootenai Co. v. Hope Lbr. Co.* (1907) 13 Ida. ...; 89 Pac. 1054.

General Road Fund.

Sec. 887. From the road tax collected from all sources the board of commissioners may annually set apart a sum not exceeding twenty-five per cent of the aggregate for general county road purposes, from which they may direct such amounts to be paid as may be found necessary for such general road purposes in which the inhabitants of all the districts are more or less interested. The object of the appropriation must be specified in each order made therefor.

Historical: Rev. St. 1887, Sec. 874.

California Legislation: Same except "supervisors" for commissioners," line 2, and "fifteen" for twenty-five," line

2: Pol. Code 1872, Sec. 2653; see Deering's Code, Sec. 2651; Kerr's Code, ib.

Contracts for Repair of Highways.

Sec. 888. The county commissioners shall, at least three weeks prior to their regular meeting in January or July, or at such other times as may become necessary, cause notice to be published in some newspaper, published in the county, for sealed proposals to be received by said board for keeping in repair and improving the public roads and highways in all districts, set apart as contract road districts; and each proposal, or bid, so submitted to the board, shall be accompanied by a bond conditioned for the faithful performance of the duties of the contract, which may be entered into by and between the party making the proposal, or bid, and the board of county commissioners, in a sum not less than double the amount of the bid for improvement and keeping in repair the roads and highways within the district proposed, the bond to be secured by two or more sureties who shall justify in the same form and manner as is required on bonds of county officers: *Provided*, That all bidders shall be residents of the road districts which they contract for. At the time stated in the notice, the board of county commissioners shall open and examine the proposals, or bids, and award, to the lowest or best bidder, the contract for not less than two nor more than three years for the respective contract road districts: *Provided, further*, That the board shall reserve the power to reject any and all bids.

Historical: Laws 1893, 184, Sec. 2; amended Laws 1895, 22, Sec. 1; re-enacted Laws 1899, 127, Sec. 3; amended Laws 1907, 163, Sec. 1.

Cross Reference: Justification of sureties on bonds of county officers: Sec. 289.

Release of Contractor: A board of county commissioners has neither express nor implied power to accept the

resignation of a bidder to whom they have duly and regularly awarded a road contract under this and the following sections; it is to the interest of the county that such contracts be enforced and against its interest to release the contractors from their obligations. *Corker v. Commissioners of Elmore Co.* (1904) 10 Ida. 255; 77 Pac. 633.

Duties of Contractors.

Sec. 889. Any person or persons contracting as provided in this article, shall cause all roads and highways in their respective districts to be kept clear of obstruction, and in good repair, banks to be graded,

bridges and crossings to be made where the same may be necessary to keep the same in good repair, put in snow bridges when snow roads are used during the winter months, whenever the same may be required, and shall use reasonable diligence in keeping each road passable.

Historical: Laws 1893, 184, Sec. 2;
re-enacted Laws 1899, 127, Sec. 16;
amended Laws 1907, 163, Sec. 2.

Cited: *Corker v. Board of Commissioners* (1904) 10 Ida. 255; 77 Pac. 633.

Failure to Perform Contract.

Sec. 890. The board of county commissioners, or the commissioner of any commissioner district, upon learning that any of the public roads are not repaired and kept in good order by any one contracting to do so in a contract road district, shall have power and shall cause the same to be done by placing labor thereon; and such expense shall be retained from any amount that may be due him on his contract, and should that be insufficient, or nothing be due thereon, the deficiency or whole amount, as the case may be, shall be collected from his bondsmen, as other liabilities: *Provided*, That each commissioner shall act only within his commissioner district, except at the regular meetings of the board of county commissioners.

Historical: Laws 1893, 184, Sec. 2;
re-enacted Laws 1899, 127, Sec. 16;
amended Laws 1907, 163, Sec. 2.

Cited: *Corker v. Board of Commissioners* (1904) 10 Ida. 255; 77 Pac. 633.

Allowance of Contractors' Claims.

Sec. 891. The several amounts allowed to the contractors in the several and respective contract road districts, shall be audited and allowed as other claims against the county, by the board of county commissioners at their regular meeting, and shall be paid quarterly.

Historical: Laws 1893, 184, Sec. 2;
re-enacted Laws 1899, 127, Sec. 16;
amended Laws 1907, 163, Sec. 2.

Cited: *Corker v. Board of Commissioners* (1904) 10 Ida. 255; 77 Pac. 633.

Collection of Poll Tax in Contract Districts.

Sec. 892. In all road districts set apart as contract road districts the road poll tax therein shall be collected by the tax collector, and be by him paid into the county treasury and applied to the county road fund.

Historical: Laws 1893, 184, Sec. 2;
re-enacted Laws 1899, 127, Sec. 16;
amended Laws 1907, 163, Sec. 2.

Cited: *Corker v. Board of Commissioners* (1904) 10 Ida. 255; 77 Pac. 633.

Every City a Road District.

Sec. 893. Each incorporated city, town or village in this State constitutes a separate road district under this title, and the city council of each city, and the board of trustees of each town or village as far as relates to their city, town or village, have the powers conferred, and must perform the duties imposed, upon the board of county commissioners of their respective counties by this chapter. Each city council and board of trustees must appoint a road overseer, who must, within such city, town or village, have the powers conferred, and perform the duties imposed by this chapter, upon road overseers; and each city council or board of trustees may remove

the overseer, or may require a bond or settlement from him at any time, and must fill any vacancy in such office; and regulate the length, grade and size of bridges, causeways and culverts; may provide for the construction and maintenance of sewers, sidewalks and street crossings, and the grade and construction and maintenance of streets and alleys, and have all the powers as to streets and alleys conferred by their respective charters or acts of incorporation, and by this chapter.

Historical: Rev. St. 1887, Sec. 887 (see 13 Ter. Ses. (1885) 162, Sec. 43); amended Laws 1895, 132, Sec. 1; reenacted Laws 1899, 270, Sec. 1.

Cited: City of Lewiston v. Booth (1893) 3 Ida. 692, 34 Pac. 809; Carson v. City of Genesee (1903) 9 Ida. 244, 74 Pac. 862; Village of Mountainhome v. Elmore Co. (1904) 9 Ida. 410, 75 Pac. 65; Village of Sandpoint v. Doyle (1905) 11 Ida. 642, 83 Pac. 598.

Liability for Defective Streets: Cities and villages incorporated under the general laws of the State are liable for negligent discharge of the duty imposed on them of keeping streets in a reasonably safe condition for travelers. Moreton v. Village of St. Anthony (1904) 9 Ida. 532; 75 Pac. 262.

ARTICLE 4.

HIGHWAY TAXES.

Section

- 894. Road poll and per capita tax.
- 895. Overseers must make lists of inhabitants.
- 896. Estimate of road tax and commutation fee.
- 897. Road tax receipts.
- 898. Application of taxes.
- 899. Adding omitted names.

Section

- 900. Levy of property road tax.
- 901. Levy of special road tax.
- 902. Copy of levy to be sent to road overseers.
- 903. Notice to perform labor.
- 904. Performance of labor. Receipts.
- 905. Delinquency of tax: Fund.
- 906. Performance of excess labor.

Road Poll and Per Capita Tax.

Sec. 894. Every male inhabitant of a road district, over the age of twenty-one, and under fifty years of age, must perform two days' labor annually to be known as the road poll tax, upon the roads and highways of the district, under the demand and direction of the road overseer thereof, or pay to such overseer a commutation fee of four dollars, or such smaller amount as may be fixed as the commutation fee by the board of commissioners: *Provided*, That, whenever in the judgment of the board of commissioners of any county it shall be deemed expedient and advisable to work the roads of such county by contracting for the maintenance and repair thereof, they may levy a per capita road tax of not more than four dollars upon every male inhabitant in such county over twenty-one and under fifty years of age, to be known as a "road per capita tax," which shall be collected by the tax collector of the county at the time, and in the manner, provided for the collection of poll taxes, with like penalty for delinquency in the payment thereof. All provisions of law relative to the printing and delivery of such poll tax receipts to the tax collector, and settlement thereof by the assessor with the auditor, and also for the enforcement and collection thereof, shall apply equally to such road per capita tax, except that the money collected therefrom shall be apportioned to the road fund of such county.

Historical: Rev. St. 1887, Sec. 880 (see 13 Ter. Ses. (1885) 162, Sec. 20); amended Laws 1901, 297, Sec. 1.

California Legislation: Similar to the proviso, rest omitted: Pol. Code 1872, Sec. 2657; repealed 1883.

Overseers Must Make Lists of Inhabitants.

Sec. 895. Each road overseer must, within twenty days after being notified of his appointment and qualification, deliver to the clerk of the board of commissioners a list of the inhabitants of his district liable for the road poll tax therein. This list must be laid before the board of commissioners at their first meeting held thereafter.

Historical: Rev. St. 1887, Sec. 881.

California Legislation: Same except "supervisors" for "commissioners," and "or to the commissioner of high-

ways" inserted after "commissioners," line 3: Pol. Code 1872, Sec. 2658; repealed 1880.

Estimate of Road Tax and Commutation Fee.

Sec. 896. The board of commissioners must each year, at the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year over and above the road poll tax, and must regulate and fix the amount of property highway tax, and levy the same thereby; and at the same time, the board of commissioners must fix the commutation fee for the road poll tax at an amount not exceeding four dollars.

Historical: Rev. St. 1887, Sec. 882.

California Legislation: Same except "supervisors" for "commissioners," and "prior to" for "at" the meeting,

line 1: Pol. Code 1872, Sec. 2659; see Deering's Code, Sec. 2653; Kerr's Code, ib.

Road Tax Receipts.

Sec. 897. At the time of fixing the commutation fee the board of commissioners must provide proper blank road poll tax receipts, to be signed by the clerk of the board, and must deliver to each road overseer a number equal to the number of inhabitants of their respective districts liable for road poll tax, take receipt therefor, and charge the road officer receiving the same therewith; but credit must be given to each road overseer for all unsold blank road poll tax receipts returned to the clerk of the board of commissioners.

Historical: Rev. St. 1887, Sec. 883.

California Legislation: Same except "Supervisors" for "commissioners":

Pol. Code 1872, Sec. 2660; repealed 1883.

Application of Taxes.

Sec. 898. The road overseers must make out lists of the inhabitants of the road districts liable for road poll tax, and require of each the performance of the labor or the payment of the commutation fee fixed by the board of commissioners, and apply such labor and commutation money in the opening, maintenance and repair of the highways and adjuncts in their respective road districts.

Historical: Rev. St. 1887, Sec. 884.

California Legislation: Similar: Pol. Code 1872, Sec. 2661; repealed 1883.

Adding Omitted Names.

Sec. 899. The overseers must, from time to time, add to the lists the names of persons liable for road poll tax who were omitted or who have become inhabitants of their districts since the original list

was made, and enforce the road poll tax or collect the commutation fee therefor, and apply the same as hereinbefore provided.

Historical: Rev. St. 1887, Sec. 885.

California Legislation: Same except "the commissioner of highways and

road overseers" for "the overseers," line 1: Pol. Code 1872, Sec. 2662; repealed 1883.

Levy of Property Road Tax.

Sec. 900. The annual property tax for road purposes must be levied by the board of commissioners at their session when the tax is by them levied for county purposes, and must not be less than ten, or exceed sixty, cents on each one hundred dollars in value of taxable property. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other State and county taxes are levied, assessed and collected, and turned over to the county treasurer, for the use of the road fund.

Historical: Rev. St. 1887, Sec. 886; amended Laws 1890-91, 190, Sec. 3; re-enacted Laws 1899, 127, Sec. 4.

California Legislation: Similar except as to limits of tax: Pol. Code 1872, Sec. 2663; repealed 1883. See Deering's Code, Sec. 2654; Kerr's Code, *ib.*

Cited: Canyon Co. v. Toole (1902) 8 Ida. 501; 69 Pac. 320.

Levy of Road Tax: This section authorizes county commissioners to levy a road tax on property in towns and villages. City of Genesee v. Latah Co. (1894) 4 Ida. 141; 36 Pac. 701.

Levy of Special Road Tax.

Sec. 901. The board of county commissioners in each county of the State may, at the first regular meeting thereof in January of each year, by resolution entered at length upon the record of minutes of the meeting, levy a special property road tax, not to exceed an amount equal to ten mills on the dollar, on all taxable property in the county, as is shown by the assessment books of the county for the last preceding year (except such property as is within the corporate limits of any incorporated city, town or village), which tax shall be payable either in money or in work and labor, as is hereinafter provided. And in the event it is deemed inadvisable by the board of county commissioners of any county or counties in the State to levy a special road tax upon all taxable property, as hereinbefore provided, and *Provided, further*, that a majority of the resident tax payers of any road district or districts in such county shall have, at the time of the first regular meeting in January, petitioned said board of county commissioners for the levy of a special road tax for their particular road district or districts, then the said board of county commissioners shall levy a special road tax in such amount as set forth in the petition therefor, not, however, exceeding an amount equal to ten mills on the dollar on all the taxable property in such road district or districts, as shown by the assessment books of the county for the last preceding year, and such tax shall be payable either in money or in work and labor, as hereinafter provided. And from and after such levy such tax shall become a lien upon all real property in the same manner and to the same extent that taxes levied for State and county purposes become a lien thereon; and at the same time and place and in the same manner, the commissioners shall fix the compensation to be allowed for each day's work or labor of eight hours of a man or team and the use of tools.

Historical: Laws 1901, 78, Sec. 1; amended Laws 1907, 572, Sec. 1.

Constitutionality: This act in providing for a special property road tax on property otherwise taxed for gen-

eral road purposes, does not authorize double taxation within the meaning of Constitution, Art. 7, Sec. 5. *Humbird Lbr. Co. v. Kootenai Co.* (1904) 10 Ida. 490; 79 Pac. 396.

Copy of Levy to Be Sent to Road Overseers.

Sec. 902. Upon the making of such levy, the auditor must, before the first day of the next succeeding April, make under his seal, and mail to the postoffice address of, or deliver in person to, each road overseer in each district in the county, if the assessment covers the entire county, and otherwise to the road overseers of such road district or districts in which a levy for special road tax shall have been made, a copy of such resolution or resolutions and a description of all taxable property in his road district, together with the names of the owners thereof, as the same appears on the assessment books of the last preceding year; and also the amount of taxes due from each person, firm, or corporation therein named; and he shall also make and retain in his office copies thereof, showing the names of all persons, firms and corporations owning property in the county subject to the tax herein provided for, together with the amount due from each. And at the time he makes the entries in the assessment book of his county, under the provisions of Section 1707 of these Codes, he shall enter therein, under appropriate heading, the amount of said taxes opposite the name of the person to whom the property upon which the same is assessed belongs, as is shown by said assessment book.

Historical: Laws 1901, 78, Sec. 2; amended Laws 1907, 572, Sec. 1. "Section 1707" inserted for "Section 1489 of the Revised Statutes as amended" by Laws 1899, 254. The amendatory act of 1899 was expressly

repealed by Laws 1901, 233, but Section 1707 of these Codes, taken from the 1901 act, is the same in substance as the section (1489) originally referred to in this section.

Notice to Perform Labor.

Sec. 903. After receiving such statement from the auditor, each road overseer must, between the first days of the next succeeding May and July, give notice to all persons, firms, or corporations, residing in and owning property within his road district, subject to the tax herein provided for, that he or they may perform work or labor upon the public highway in his district, in payment of said tax. Such notice may be either oral or in writing, and must designate the place where and the time when (which must not be less than five days from the date thereof), such work and labor may be performed. And in case of non-resident owners, he shall give such notice to the known agents thereof, if any, or to any person, if any there be, in possession of the property of such non-resident: *Provided*, That at any time between the said first days of May and July, any person, firm, or corporation, not receiving such notice may offer to perform work and labor upon the public highway in payment of any tax herein provided for, and the road overseer must designate the place where and the time when (which must not be more than five days from the date of such offer), the person so offering may perform such work and labor: *Provided, further*, That any work done by any taxpayers after the said first day of July, at the request of the road overseer of

any district, or with his consent and before said taxes become delinquent, shall be applied in the payment of the taxes hereinbefore provided for, according to the provisions of these sections.

Historical: Laws 1901, 78, Sec. 3.

Performance of Labor: Receipts.

Sec. 904. Every person, firm, or corporation owning any property subject to the tax above provided for, may pay the same by performing, or causing to be performed, work and labor upon the public highways in the road district where said property is situated, under the direction and supervision of the road overseer of said district. The road overseer shall keep an accurate account of all work and labor so performed by or for any person, firm, or corporation owning property in his district subject to the tax hereinbefore provided for, and after the performance of any such work and labor, and before the fifteenth day of the succeeding July, the road overseer of each district shall make and sign, in duplicate, a receipt or receipts for the amount of work done by or for any person, firm, or corporation; and shall deliver one to the person, firm, or corporation entitled thereto, or to his or their agent, and shall transmit the other to the county assessor, who shall, when the assessment book is delivered to him by the auditor for the collection of taxes, credit thereon to the proper person, firm, or corporation the amount of taxes paid, as is shown by such receipt; and the county treasurer shall receive said receipts from the assessor and tax collector in payment of said special property road tax; and the county auditor shall receive said receipts from the county treasurer as a payment of the same: *Provided*, That the assessor may, at any time before said taxes become delinquent, receive from any person, firm, or corporation in payment thereof, a receipt signed by the road overseer of the district wherein the property is situated, for work and labor performed, equal to the amount of taxes, which receipt he shall deliver to the county treasurer, and the county treasurer to the county auditor, in payment of said taxes.

Historical: Laws 1901, 78, Sec. 4.

Delinquency of Tax: Fund.

Sec 905. The taxes herein provided for shall become delinquent at the same time and in the same manner as taxes levied for State and county purposes become delinquent, and thereafter shall be payable in money, and not otherwise, and all laws relating to the collection of delinquent taxes shall be applicable to the taxes herein provided for and to the collection thereof; and such taxes herein provided for as shall become delinquent, and as shall be paid in money, shall be kept by the county treasurer in a separate fund for the use and benefit of the road district wherein the property is situated, upon which the same was levied; and such moneys shall be used only for the purpose of maintaining the public highways in the district wherein the same were collected, and shall be paid out only upon warrants regularly drawn thereon by the auditor, upon the order of the board of county commissioners, for bills presented thereto by the road overseer of such district; and after the same has been allowed as other bills or claims against the county are allowed: *Provided*, That no warrant

shall be ordered or drawn upon any such fund of any road district in excess of the amount of money actually in the hands of the county treasurer at the time that any bill shall be presented to the board of county commissioners, nor shall any bill so presented be allowed by the board of county commissioners unless there shall be sufficient funds in the hands of the county treasurer to pay the same, nor shall any liability against the county, or against any road district, be created by the board of county commissioners, or otherwise, for any work or labor performed pursuant to the provisions of these sections, unless there shall be sufficient moneys in the hands of the county treasurer to the credit of said road district to pay the same.

Historical: Laws 1901, 78, Sec. 5.

Performance of Excess Labor.

Sec. 906. If the owner of any property subject to the tax herein provided for, shall, between the first days of May and September of any year, perform, or cause to be performed, work and labor upon the public highway, at the request of or with the consent of the road overseer of the district, in excess of the amount of taxes levied thereon, the road overseer shall make a receipt in duplicate for the same and shall deliver one to such owner or his agent, and shall forward the other to the county assessor; and such work and labor shall be deemed a payment upon any taxes thereafter levied upon the property then owned by such person, and none other; and all county officers shall receive such receipts as a payment thereof in the same manner and to the same extent as is hereinbefore provided: *Provided always*, That such receipts so issued shall not be transferable to any person or persons whomsoever.

Historical: Laws 1901, 78, Sec. 6.

ARTICLE 5.

HIGHWAY LABOR AND COMMUTATION.

Section	Section
907. Not to be performed out of district.	911. Acceptance of excuse no exemption.
908. Employers liable for employees' tax.	912. Road overseers' reports.
909. Day's work: Penalty for idleness: Substitutes.	913. Same: Special reports.
910. Delinquency.	914. Settlements for money on hand.
	915. Penalty for failure to report.

Not to Be Performed Out of District.

Sec. 907. Road overseers must not require an individual to work out of the district in which he resides.

Historical: Rev. St. 1887, Sec. 900.

California Legislation: Same: Pol. Code 1872, Sec. 2680; repealed 1883.

Employers Liable for Employees' Tax.

Sec. 908. Corporations or other employers of residents in any highway district, are responsible for the road poll tax assessed against their employees, and a notice to the employer or managing agent requiring the payment of the road poll tax of the employee, charges such employer or corporation with such road poll tax.

Historical: Rev. St. 1887, Sec. 901.

California Legislation: Same: Pol. Code 1872, Sec. 2681; see Deering's Code, Sec. 2671; Kerr's Code, ib.

Not Repealed: This section is not repealed by Laws 1899, p. 392 (Codes, Sec. 886), which provides an additional remedy for the collection of road poll taxes. *Kootenai Co. v. Hope Lumber Co.* (1907) 13 Ida. —; 89 Pac. 1054.

Liability of Employers: This section makes corporations and other employers of persons subject to pay a

road poll tax, responsible for such taxes upon a proper notice being given to them, in case they then are or afterwards become indebted to the employee liable for the tax. Ib.

Same—Action: Under this section the prosecuting attorney of a county may bring an action in the name of the county to recover from an employer the amount of an employee's road poll tax when the employer has been served with proper notice and is indebted to the employee in an amount equal to the tax. Ib.

Day's Work: Penalty for Idleness: Substitutes.

Sec. 909. Each person appearing must actually work eight hours each day, to be credited to him by the overseer. For every hour unnecessarily lost or idled away he must be charged two hours, to be worked out on some other day under notice from the overseer. Any person may work by an able bodied substitute.

Historical: Rev. St. 1887, Sec. 902. See 13 Ter. Ses. (1885) 162, Sec. 24.

California Legislation: Same: Pol. Code 1872, Sec. 2682; repealed 1883.

Delinquency.

Sec. 910. Every person receiving due notice, who does not appear and labor or commute, is delinquent.

Historical: Rev. St. 1887, Sec. 903. See 13 Ter. Ses. (1885) 162, Sec. 22.

California Legislation: Same: Pol. Code 1872, Sec. 2683; repealed 1883.

Acceptance of Excuse No Exemption.

Sec. 911. The overseer's acceptance of an excuse for a neglect in no case exempts the person excused from performing or commuting the whole number of days' work for which he was assessed.

Historical: Rev. St. 1887, Sec. 904.

California Legislation: Same: Pol. Code 1872, Sec. 2684; repealed 1883.

Road Overseers' Reports.

Sec. 912. Every overseer must make to the commissioners, semi-annually, a written report, under oath, containing:

First. The names of all persons assessed to work in his district.

Second. The names of all who have actually worked, and the number of days.

Third. The names of all who have commuted, and the amount received from them.

Fourth. The names of all delinquents, and the amount collected from them.

Fifth. A full return by items of the amount of labor performed at each separate point, and the manner in which, and the time when, the same was done.

Sixth. The number of road poll tax receipts sold, and those returned unsold.

Seventh. An accurate account of every day he himself was employed, and the nature and items of the service rendered.

Historical: Laws 1899, 127, Sec. 5; re-enacting Laws 1890-91, 190, Sec. 4.

Cross Reference: Overseers to report on bridges: Sec. 942.

Same: Special Reports.

Sec. 913. The commissioners may require special reports from road overseers when deemed proper.

Historical: Rev. St. 1887, Sec. 906.
California Legislation: Similar: Pol.
Code 1872, Sec. 2686; repealed 1880.

Settlements for Money on Hand.

Sec. 914. The road overseers must accompany their reports with all moneys remaining in their hands at the date of the report. In addition to the reports required of road overseers in Section 912, each road overseer shall, on the first Monday of each month, report to the auditor of his county all moneys that may have come into his hands as such road overseer during the preceding month, stating therein, particularly, the source from which the same was derived. Upon receiving such report the auditor shall certify to the treasurer the amount due from such road overseer and to what fund or funds the same may belong. Within five days the road overseer making such report shall pay over to the county treasurer the whole amount specified in his report for the preceding month. The treasurer shall then make and file with the auditor a receipt for the amount paid, and the auditor shall give to the road overseer a release for the amount and charge the treasurer with the same.

Historical: Laws 1899, 127, Sec. 6; | "Section 912" inserted for "Article five
re-enacting Laws 1890-91, 190, Sec. 5. | of this chapter."

Penalty for Failure to Report.

Sec. 915. A failure to make a report as required, or to pay over according to law, or on the order of the commissioners, any moneys in his hands, subjects to the overseer to a penalty of twenty-five dollars to be recovered in an action on his bond, together with any balance due from him; suit therefor may be instituted by the prosecuting attorney under order of the board of commissioners.

Historical: Laws 1899, 127, Sec. 7; | "Prosecuting attorney" for "district
re-enacting Laws 1890-91, 190, Sec. 6. | attorney."

ARTICLE 6.

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS.

Section	Section
916. Petition for road.	928 Width of highways.
917. Contents of petition.	929. Establishment of private roads.
918. Bonds for costs.	930. Record of title papers.
919. Appointment of viewers.	931. Railroads to make crossings.
920. Duties of viewers.	932. Removal of fences.
921. Report of viewers.	933. Turning roads across private lands.
922. Restrictions on line of road.	934. Public roads established without viewers.
923. Compensation of viewers.	935. Same: Bond for expense of survey.
924. Hearing on report.	
925. Approval of report.	
926. Condemnation of right of way.	
927. Awards paid from road fund.	

Petition for Road.

Sec. 916. Any ten inhabitants of a road district taxable therein

for road purposes, may petition in writing the board of commissioners to alter or discontinue any road or to lay out a new road therein.

Historical: Rev. St. 1887, Sec. 920. See 13 Ter. Ses. (1885) 162, Sec. 2.

California Legislation: Same except "the commissioner of highways or the board of supervisors" for "the board of commissioners": Pol. Code 1872,

Sec. 2698; see Deering's Code, Sec. 2681; Kerr's Code, ib.

Cited: Canyon County v. Toole (1904) 9 Ida. 561; 75 Pac. 609; Latah Co. v. Hasfurther (1907) 12 Ida. 797; 88 Pac. 433.

Contents of Petition.

Sec. 917. The petition must set forth and describe particularly the road to be abandoned, discontinued, altered, or constructed, and the general route thereof, over what lands, and who the owners thereof are, whether the owners consent thereto, and if not, the probable cost of the right of way, the necessity for, and the advantages of, the proposed change.

Historical: Rev. St. 1887, Sec. 921.

California Legislation: Same: Pol. Code 1872, Sec. 2699; see Deering's Code, Sec. 2682; Kerr's Code, ib.

Petition—Mode of Attack: A petition for laying out a public road must substantially contain the substantive facts required to be stated by the provisions of this section, in order to give the board jurisdiction of the subject matter where the non-consenting land owner fails to appear and contest the

laying out of the highway, but if the non-consenting land owner appears and raises no objection to the form of the petition, and proceeds as though it were sufficient, and introduces his testimony and prays for damages, he cannot collaterally attack the order of the board on the ground of defects in the petition, in condemnation proceedings by the county. Canyon Co. v. Toole (1904) 9 Ida. 561; 75 Pac. 609.

Bond for Costs.

Sec. 918. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the commissioners, in double the amount of the probable cost of the viewing and laying out or altering of any road, conditioned that the bondsmen will pay all the costs of viewing and surveying in case the prayer is not granted, and the road finally not opened.

Historical: Rev. St. 1887, Sec. 922.

California Legislation: Same except "supervisors" for "commissioners,"

line 2: Pol. Code 1872, Sec. 2700; see Deering's Code, Sec. 2683; Kerr's Code, ib.

Appointment of Viewers.

Sec. 919. Upon filing such petition and bond, the board of commissioners must appoint three viewers, one of whom must be a surveyor, to view and survey any proposed alteration of an old or opening of a new road, to be made in accordance with the description in the petition, and submit to the board an estimate of the cost of the change, alteration, or opening, including the purchase of the right of way and their views of the necessity thereof.

Historical: Rev. St. 1887, Sec. 923. See 13 Ter. Ses. (1885) 162, Sec. 4.

California Legislation: Same except "supervisors" for "commissioners": Pol. Code 1872, Sec. 2701; similar: Deering's Code, Sec. 2684; Kerr's Code, ib.

County Surveyor as Viewer: The

county commissioners need not appoint the county surveyor one of the viewers, but in case they do so, the county surveyor does not act in his official capacity and must take the oath prescribed by the following section. Latah Co. v. Hasfurther (1907) 12 Ida. 797; 88 Pac. 433.

Duties of Viewers.

Sec. 920. The road viewers must be disinterested citizens of the county, but not petitioners; they must be sworn to discharge their duties faithfully; must view and lay out the proposed alteration or new road over the most practicable route; notify the owners of the land over which it passes of the proposed route; ascertain whether the owners consent thereto, and the amount, if any, they claim or demand for the right of way over the same; estimate the actual damage to any land over which it passes, and the cost of any bridges or grading necessary; the necessity for and public convenience to be subserved by the road, and whether the opening thereof, or change therein proposed should be had.

Historical: Rev. St. 1887, Sec. 924.

California Legislation: Same: Pol. Code 1872, Sec. 2702; similar: Deering's Code, Sec. 2685; Kerr's Code, ib.

Failure to Take Oath: The failure of a viewer to take the oath prescribed by this section renders the

whole proceeding irregular and voidable on an appeal to the district court from an order of the board of commissioners opening the road. *Latah Co. v. Hasfurther* (1907) 12 Ida. 797; 88 Pac. 433.

Report of Viewers.

Sec. 921. When the view and survey of the proposed alteration or new road is completed, the viewers must report to the board of commissioners:

1. The course, termini, length, and cost of construction of the proposed road;
2. The estimate of damage to the owner of any land over which it is proposed to run the road;
3. The names of land owners who consent to give the right of way and their written consent thereto;
4. The names of land owners who do not consent, and the amount of damage claimed by each;
5. Such other facts bearing upon the subject, of importance to be known by the board of commissioners.

Historical: Rev. St. 1887, Sec. 925. See 13 Ter. Ses. (1885) 162, Secs. 5 and 16.

California Legislation: Same except

"supervisors" for "commissioners": Pol. Code 1872, Sec. 2703; similar: Deering's Code, Sec. 2686; Kerr's Code, ib.

Restrictions on Line of Road.

Sec. 922. No report of viewers must be approved by the board of commissioners which, without the consent of the owner and occupant, runs the road:

1. Through an orchard of four years' growth;
2. Through a garden or yard four years cultivated;
3. Through buildings or fixtures, or erections for the purposes of residence, trade, or manufacture;
4. Through inclosures necessary for the use or enjoyment of buildings, fixtures or erections;

Unless the board of commissioners are satisfied, from personal examination and observation, or from the sworn statement of at least twelve respectable residents of the road district, that the opening of such road through such premises is an absolute necessity, a

great public benefit, or a great convenience to a moiety of the inhabitants of the district.

Historical: Rev. St. 1887, Sec. 926.

California Legislation: Same except "supervisors" for "commissioners" throughout, and "or 5. Though in-

closed or improved lands" inserted after subd. 4: Pol. Code 1872, Sec. 2704; repealed 1880.

Compensation of Viewers.

Sec. 923. The viewers must be paid three dollars each per day, for their services, out of the road fund, and the surveyor, for services in running out and mapping the road and making the plat and field notes, which must be filed when required before he receives his compensation, five dollars per day.

Historical: Laws 1899, 127, Sec. 8; re-enacting Laws 1890-91, 190, Sec. 7.

Hearing on Report.

Sec. 924. The board of commissioners, on the coming in of the report; must fix a day for hearing the same; must notify the owners of land, not consenting to give the right of way, of the hearing, by having written notice served on them personally, or on the occupant, or agent of the owner, or, if neither, by posting notice at the most conspicuous place on the land, or left at the owners', agent's, or occupant's residence, ten days prior to the day fixed for the hearing; and must, on the day fixed, or to which it may be postponed or adjourned, hear evidence and proof from all parties interested for and against the proposed alteration or new road; ascertain, and by order declare, the amount of damage awarded to each non-consenting land owner, and declare the report of the viewers to be approved or rejected. If the report is rejected the road must not be altered or opened.

Historical: Rev. St. 1887, Sec. 928.

California Legislation: Same except "supervisors" for "commissioners":

Pol. Code 1872, Sec. 2706; similar: Deering's Code, Sec. 2688; Kerr's Code, ib.

Approval of Report.

Sec. 925. If the board approve the report, and there are no non-consenting land owners, the road must, by order, be declared a public highway, and the road overseer ordered to open the same to the public. If there are non-consenting land owners, the board must appropriate from the road fund, and cause the road overseer to tender to such non-consenting land owners, the award of damages made by the board. If the awards are all accepted the road must be declared a public highway and be opened as hereinbefore provided.

Historical: Laws 1899, 127, Sec. 9; re-enacting Laws 1890-91, 190, Sec. 8.

Condemnation of Right of Way.

Sec. 926. If any award of damages is rejected by the land owners, the board must, by order, direct proceedings to procure the right of way to be instituted by the prosecuting attorney of the county, under and as provided in the Code of Civil Procedure, against all non-accepting land owners, and when thereunder the right of way is procured, the road must be declared a public highway and opened as hereinbefore provided.

Historical: Rev. St. 1887, Sec. 930.

California Legislation: Similar: Pol. Code 1872, Sec. 2708; see Deering's Code, Sec. 2690; Kerr's Code, ib.

Cross Reference: Condemnation proceedings: Secs. 5210-5229.

Defenses: A non-consenting land owner against whom condemnation

proceedings are brought under this section cannot attack the decision of the board granting the petition on the ground of the failure of the petition for the road to set forth the facts required by Rev. St. Sec. 921 (Sec. 917). Canyon Co. v. Toole (1904) 9 Ida. 561; 75 Pac. 609.

Awards Paid From Road Fund.

Sec. 927. All awards by agreement, or ascertainment by the board or by the proper court, must be paid out of the road fund on the order of the board of commissioners.

Historical: Laws 1899, 127, Sec. 10; re-enacting Laws 1890-91, 190, Sec. 9.

Width of Highways.

Sec. 928. All highways, except alleys and bridges, must be at least fifty feet wide except those now existing of a less width.

Historical: Rev. St. 1887, Sec. 932. See 13 Ter. Ses. (1885) 162, Sec. 10.

California Legislation: Same except

"except alleys and bridges" omitted: Pol. Code, Sec. 2710; repealed 1883.

Establishment of Private Roads.

Sec. 929. Private or by-roads may be opened for the convenience of one or more residents of any road district in the same manner as public roads are opened, whenever the board of commissioners may for like cause order the same to be viewed and opened, the person for whose benefit the same is required paying the damages awarded to land owners, and keeping the same in repair.

Historical: Rev. St. 1887, Sec. 933. See 13 Ter. Ses. (1885) 162, Sec. 14.

California Legislation: Same except "supervisors" for "commissioners": Pol. Code 1872, Sec. 2711; see Deering's Code, Sec. 2692; Kerr's Code, ib.

Constitutionality: This section is not subject to the constitutional objection of attempting to take private property for private use, as it authorizes a private road, when opened, to be used for any purpose to which it is adapted by the general public and by any individual thereof. Latah County v. Peterson (1892) 3 Ida. 398; 29 Pac. 1089.

Opening Private Roads: By-roads may be opened for the convenience of one or more residents in any road district in the same manner as public roads, the person or persons for whose benefit the road is opened paying the damages awarded to land owners and keeping the same in repair; one signature is sufficient to authorize the county commissioners to take the necessary steps to open a private or by-roads, and it is not necessary to have ten signers to the petition as in the case of a public road provided for by Rev. St. Sec. 920 (Sec. 916). Latah Co. v. Hasfurther (1907) 12 Ida. 797; 88 Pac. 433.

Record of Title Papers.

Sec. 930. In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the decree of the court condemning the same, must be made and filed and recorded in the office of the recorder of the county, in which the land so conveyed or condemned must be particularly described.

Historical: Rev. St. 1887, Sec. 934.

California Legislation: Same: Pol.

Code 1872, Sec. 2712: Deering's Code, Sec. 2693; Kerr's Code, ib.

Railroad to Make Crossings.

Sec. 931. Whenever highways are laid out to cross railroads on public lands, the owners or corporations using the same must, at their own expense, so prepare their road that the public highway may cross the same without danger or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, no damage must be awarded for the simple right to cross the same.

Historical: Rev. St. 1887, Sec. 935; amended Laws 1899, 405, Sec. 1.

California Legislation: Pol. Code, 1872, Sec. 2713; similar. Deering's Code, Sec. 2694; Kerr's Code, *ib.*

Construction: This section is prospective in its operation and does not

apply to ditches and canals that have been constructed across public highways prior to the time the same went into effect. *Boise City v. Boise Rapid Transit Co.* (1899) 6 Ida. 779; 59 Pac. 716.

Removal of Fences.

Sec. 932. When the alteration of an old, or the opening of a new, road makes it necessary to remove fences on land given, purchased or condemned by order of a court for road or highway purposes, notice to remove the fences must be given by the road overseer to the owner, his occupant, or agent, or by posting the same on the fence, and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the road overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment.

Historical: Rev. St. 1887, Sec. 936.

California Legislation: Same except "commissioner of highways" inserted after "road overseer," line 4, and be-

fore "road overseer," line 7: Pol. Code 1872, Sec. 2714; similar: Deering's code, Sec. 2695; Kerr's Code, *ib.*

Turning Roads Across Private Lands.

Sec. 933. If any person through whose lands any public highway is established, is desirous of turning such road through any other part of his lands, such person may, by petition, apply to the county commissioners, to permit him to turn such road through another part of his lands, without materially increasing the distance to the injury of the public; and on receipt of such petition, accompanied by a sufficient bond to pay the cost and expense to be incurred thereby, the commissioners may appoint three disinterested viewers and surveyor, if they deem it necessary, who must view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and report in writing, stating the several distances so found, together with their opinion as to the utility of making such alterations; and if the viewers report to the commissioners that the prayer of the petitioner is reasonable, the commissioners, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new; and the person petitioning for the alteration must pay all costs and expense of the view and survey, if ordered:

Provided, When any person or persons wish to change the line or location of any public highway, he or they shall cause notice of his or their intention to apply to the board of county commissioners of the county in which such road is situated at its next session, for permission to change such road at his own expense; to be published in the official newspaper published in such county (if there be one), if not, then in the newspaper published nearest to the proposed change, not less than three weeks before the first day of such session of the said board, and shall also cause a copy of the notice to be posted at the post office (if there be one), and at three other public places in the precinct, at least twenty days before the said meeting of the board, which notice must clearly show the proposed change or changes, and when, where, and by whom the petition will be presented; and at the time and place designated in the notice he must present his petition, which must conform to the notice. Any person or persons objecting to such change may, within ten days thereafter, file a remonstrance in writing against it: *Provided*, That any person aggrieved by the action of the board may appeal to the District Court of the county in the same manner and with like effect as in other cases of appeal from the action of the board of county commissioners.

Historical: Rev. St. 1887, Sec. 937;
amended Laws 1907, 456, Sec. 1.

Cross Reference: Appeals from county
commissioners: Secs. 1950-1953.

Public Roads Established Without Viewers.

Sec. 934. Public roads may be established without the appointment of viewers, provided the written consent of all the owners of the land to be used for that purpose be first filed with the board of county commissioners; and if it is shown to the satisfaction of the county board that the proposed road is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only, shall it be regarded as a public road.

Historical: Laws 1899, 168, Sec 1;
re-enacting Laws 1893, 11, Sec. 1.

Same: Bond for Expense of Survey.

Sec. 935. If a survey for the establishment of the road named in the preceding section is necessary, the board, before ordering such survey, may require the party or parties asking for the establishment of such highway to pay, or secure the payment by proper bond, of the expenses of such survey.

Historical: Laws 1899, 168, Sec. 1;
re-enacting Laws 1893, 11, Sec. 1.

ARTICLE 7.

ERECTION AND MAINTENANCE OF BRIDGES.

Section	Section
936. Construction and repair of bridges.	939. Petition for repair of bridge.
937. Special tax for roads and bridges.	940. Same: For construction of bridge.
938. Contracts for construction and repair.	941. Hearing of petition.
	942. Reports on bridges.

Construction and Repair of Bridges.

Sec. 936. Whenever it shall appear to be to the best interests of the counties concerned to build or repair bridges over streams which divide such counties, or on roads on county lines, it shall be lawful for the commissioners of such adjoining counties to enter into a joint contract for the purpose of building or repairing such bridge or bridges. The one-half of the whole expense of building or repairing shall be a legal claim against, and be paid by, each of said adjoining counties. All public bridges not otherwise specially provided for are maintained by the county at large in the same manner as highways, and under the management and control of the road overseer and board of commissioners. The expense of maintaining and repairing the same is primarily payable out of the road fund in the hands of the county treasurer, and from road poll taxes.

Historical: Rev. St. 1887, Sec. 945;
amended Laws 1903, 367, Sec. 1.

California Legislation: See Pol.

Code 1872, Sec. 2724; Deering's Code,
Sec. 2711; Kerr's Code, ib.

Special Tax for Roads and Bridges.

Sec. 937. Whenever it appears to the board of county commissioners that the road fund is or would be unreasonably burdened by the expense of constructing, or of maintaining and repairing, any bridge or road, or when the expense of constructing, or of maintaining and repairing, any bridge or road shall exceed five thousand dollars, the said board may, in its discretion, cause a portion of such cost or expense to be paid out of the current expense fund of the county, and may levy a special tax not exceeding one-half of one per cent on the taxable property of the county, annually, until the amount appropriated in aid is raised and paid.

Historical: Rev. St. 1887, Sec. 946;
amended Laws 1899, 127, Sec. 12;
amended Laws 1905, 67, Sec. 1.

California Legislation: See Pol.
Code 1872, Sec. 2725; Deering's Code,

Sec. 2712; as amended: Kerr's Code,
ib.

Cited: McNutt v. Lemhi Co. (1906)
12 Ida. 63; 84 Pac. 1054.

Contracts for Construction and Repair.

Sec. 938. No bridge, the cost of the construction or repair of which will exceed the sum of one hundred dollars, must be constructed or repaired except on order of the board of commissioners. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the board of commissioners, through the road overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices, one at the court house, one at the point to be bridged, and one at some other neighboring public place; the bids to be sealed, opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into to the approval of the board of commissioners.

Historical: Rev. St. 1887, Sec. 947.

California Legislation: Same except
"supervisors" for "commissioners"
throughout, and "commissioner of
highways or" inserted before "road
overseer," line 6: Pol. Code 1872, Sec.

2726; see Deering's Code, Sec. 2713;
Kerr's Code, ib.

Cited: Andrews v. Board of Com-
missioners of Ada Co. (1900) 7 Ida.
453; 63 Pac. 592.

Petition for Repair of Bridge.

Sec. 939. If the road overseer of any road district, chargeable with the repair of a bridge, fails to make the needed repairs after being informed that the bridge is impassable or unsafe, and is requested to make the same by two or more taxpayers of the district in which it is situated, or the two districts which it unites, the taxpayers may represent the facts to the board of commissioners, who, upon being satisfied that the bridge is unsafe, must cause the same to be repaired and must pay therefor from the road fund.

Historical: Laws 1899, 127, Sec. 13; re-enacting Laws 1890-91, 190, Sec. 12.	Code 1872, Sec. 2728; as amended: Deering's Code, Sec. 2715; Kerr's Code, ib.
California Legislation: Similar: Pol.	

Same: For Construction of Bridge.

Sec. 940. When a bridge, the cost of which will exceed one hundred dollars, is necessary, any five or more taxpayers of the road districts interested therein may petition the board of commissioners for the erection of such needed bridge. The board must thereupon advertise such application, giving the location and other facts, for two weeks in a newspaper printed in the county, if none, then by posters—one at the proposed location, one at the court house, and one at some other public place in the county, and notify the overseer to attend at a certain time and place to hear the application.

Historical: Rev. St. 1887, Sec. 950.	line 3; "or commissioner of highways"
California Legislation: Same except "freeholders" for "tax payers," line 2; "Supervisors" for "commissioners,"	inserted after "overseer," next to last line: Pol. Code 1872, Sec. 2729; re- pealed 1883.

Hearing of Petition.

Sec. 941. On the day fixed to hear the application, proof of the notice given being made satisfactory, the board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary as petitioned for; if found to be so, the board must determine the character of the bridge to be constructed, prepare plans and specifications, invite bids, let the contract, and have the same erected, and provide for the payment therefor as herein provided.

Historical: Rev. St. 1887, Sec. 951.	
California Legislation: Same: Pol. Code 1872, Sec. 2730; repealed 1883.	

Reports on Bridges.

Sec. 942. The road overseers must, in their official reports, give a full account of all bridges of which they have in whole or in part the charge and maintenance, those constructed or repaired, and the cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof.

Historical: Rev. St. 1887, Sec. 952.	road overseers" for "the road over-
California Legislation: Same except "the commissioner of highways and	seers," line 1: Pol. Code 1872, Sec. 2731; repealed 1883.

ARTICLE 8.
OBSTRUCTIONS AND INJURIES TO HIGHWAYS.

Section	Section
943. Removal of encroachments.	944 Same: Notice of remove.

Section

- 945. Same: Penalty for neglect.
- 946. Same: Abatement by action.
- 947. Same: Abatement by overseer.
- 948. Gates.
- 949. Same: Penalties.
- 950. Injuries to highways.
- 951. Bridges and culverts.
- 952. Repair by overseer.
- 953. Injury to guide posts.
- 954. Removal of fallen trees.
- 955. Same.

Section

- 956. Notices on bridges.
- 957. Injury to shade trees.
- 958. Disposition of penalties and forfeitures.
- 959. Local laws unaffected.
- 960. Width of highways across streams.
- 961. Passageways for stock.
- 962. Damages to highways by livestock.
- 963. Bridges to be fortified for traction engines.

Removal of Encroachments.

Sec. 943. If any highway duly laid out or erected is encroached upon by fences, buildings, or otherwise, the road overseer of the district may, orally or in writing, require the encroachment to be removed from the highway.

Historical: Rev. St. 1887, Sec. 960.

California Legislation: Same except "the commissioner of highways or road overseer" for "road overseer," line 2: Pol. Code 1872, Sec. 2743;

Deering's Code, Sec. 2731; Kerr's Code, ib.

Cited: *Stufflebeam v. Montgomery* (1891) 3 Ida. 20; 26 Pac. 125.

Same: Notice to Remove.

Sec. 944. Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he reside in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days.

Historical: Rev. St. 1887, Sec. 961.

California Legislation: Same: Pol. Code 1872, Sec. 2744; similar; Deering's Code, Sec. 2732; Kerr's Code, ib.

Cited: *Stufflebeam v. Montgomery* (1891) 3 Ida. 20; 26 Pac. 125.

Same: Penalty for Neglect.

Sec. 945. If the encroachment is not removed, or commenced to be removed and diligently prosecuted, prior to the expiration of the ten days from the service of posting the notice, the one who caused or owns or controls the encroachment forfeits ten dollars for each day the same continues unmoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for vehicles, the overseer must forthwith remove the same.

Historical: Rev. St. 1887, Sec. 962.

California Legislation: Same: Pol. Code 1872, Sec. 2745; similar; Deering's Code, Sec. 2733; Kerr's Code, ib.

Cited: *Stufflebeam v. Montgomery* (1891) 3 Ida. 20; 26 Pac. 125.

Same: Abatement by Action.

Sec. 946. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment, refuses either to remove or to permit the removal thereof, the road overseer must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment,

he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, as also his costs in such action.

Historical: Rev. St. 1887, Sec. 963.

California Legislation: Same except "the commissioner of highways or road overseer" for "the road overseer," line 4; Pol. Code 1872, Sec. 2746; Deering's Code, Sec. 2734; Kerr's Code, ib.

Purpose of Section: This section, with the three preceding ones, was

enacted for the purpose of removing obstructions from highways, and to prevent a multiplicity of suits; it precludes an action by an individual to abate a public nuisance in the absence of special damage. *Stufflebeam v. Montgomery* (1891) 3 Ida. 20; 26 Pac. 125.

Same: Abatement by Overseer.

Sec. 947. If the encroachment is not denied, but is not removed for five days after the notice is complete, the road overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as also for each day the same remained after notice was complete the sum of ten dollars, in an action for that purpose.

Historical: Rev. St. 1887, Sec. 964.

California Legislation: Same except "the commissioner of highways or road overseer" for "the road over-

seer," line 2: Pol. Code 1872, Sec. 2747; same: Deering's Code, Sec. 2735; Kerr's Code, ib.

Gates.

Sec. 948. No gates must be allowed on any public highway duly laid out, except on highways running through land subject to overflow to such extent as to remove the fences. When so allowed they must be erected and maintained at the expense of the owner or occupant at whose request or for whose benefit they were erected. If such expense is not paid, the gate must be removed as an obstruction.

Historical: Rev. St. 1887, Sec. 965.

California Legislation: Same: Pol.

Code 1872, Sec. 2748; similar: Deering's Code, Sec. 2736; Kerr's Code, ib.

Same: Penalties.

Sec. 949. Any one who leaves open such gate, or wilfully and unnecessarily rides over ground adjoining the road on which the gate is erected, forfeits to the injured party treble damages.

Historical: Rev. St. 1887, Sec. 966.

California Legislation: Same: Pol.

Code 1872, Sec. 2749; see Deering's Code, Sec. 2736; Kerr's Code, ib.

Injuries to Highways.

Sec. 950. Whoever obstructs or injuries any highway, or obstructs or diverts any water course thereon, is liable to a penalty of five dollars for each day such obstruction or injury remains, and must be punished as provided in the Penal Code.

Historical: Rev. St. 1887, Sec. 967.

California Legislation: Same except "as provided in Section 588 of the Penal Code" for "as provided in the Penal Code": Pol. Code 1872, Sec.

2750; see Deering's Code, Sec. 2737; Kerr's Code, ib.

Cross Reference: Punishment for obstruction or injury to highways: Sec. 7138.

Bridges and Culverts.

Sec. 951. Any person desiring and intending to run water across

any public road, street or highway in this State, must first construct a ditch of sufficient size to carry all such water, and must build a good substantial bridge, with good easy grades on and of the same over such ditch or ditches not less than sixteen feet wide, of good hewn or sawed timber or lumber, not less than three inches thick, laid on good substantial timbers, not less than six inches square; said timbers shall not be laid more than three feet apart: *Provided*, That when the quantity of water of any ditch is such that a box or culvert will carry the same, said water may be conducted across any road, street or highway by means of such box or culvert, which must be adapted to the surface of the road, street or highway, and be built of a length of not less than sixteen feet, and in a manner so substantial as to bear and admit of uninterrupted travel: *Provided*, That when such bridge or box shall be constructed as above required and reported to the road supervisor of the road district where the same is located, it shall become county property and be maintained as other county bridges: *Provided*, That the said bridge, box, or culvert is accepted by the road overseer as being built according to the above sections.

Historical: Rev. St. 1887, Sec. 968 (see 13 Ter. Ses. (1885) 162, Sec. 40); amended Laws 1899, 405, Sec. 2.

Cited: City of Lewiston v. Booth (1893) 3 Ida. 692; 34 Pac. 809.

Construction: This section is prospective in its operation and does not

apply to ditches and canals that have been constructed across public highways prior to the time the same went into effect. Boise City v. Boise Rapid Transit Co. (1899) 6 Ida. 779; 59 Pac. 716.

Same: Repair by Overseer.

Sec. 952. If any person owning or having ditches across any public road, street, or highway, fails or neglects to build bridges or culverts over the same as required by the last section, or to keep the same, or their ditches, on any public road, street, or highway, in good repair, it is the duty of the overseer of the district to build or repair the same at the expense of such person, and the cost thereof is a lien upon the land and premises of such ditch owner or owners, and may be sued for and collected, by and in the name of such overseer, in any court of competent jurisdiction.

Historical: Rev. St. 1887, Sec. 969. See 13 Ter. Ses. (1885) 162, Sec. 41.

California Legislation: No such provision in Pol. Code 1872; see Deering's Code, Sec. 2737; Kerr's Code, ib.

Cited: City of Lewiston v. Booth, (1893) 3 Ida. 692; 34 Pac. 809.

Injury to Guide Posts.

Sec. 953. Whoever removes or injures any guide post, or any inscription on such, erected on any highway, is liable to a penalty of ten dollars for every such offense, and punishable as provided in the Penal Code.

Historical: Rev. St. 1887, Sec. 970. See 13 Ter. Ses. (1885) 162, Sec. 28.

California Legislation: Similar: Pol. Code 1872, Sec. 2751; Deering's Code, Sec. 2738; Kerr's Code, ib.

Cross Reference: Punishment for removal of guide posts: Sec. 7135.

Removal of Fallen Trees.

Sec. 954. Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway, to remove such tree or obstruction forthwith. If it is not so removed the owner or occupant is liable to a penalty of one dollar for every day thereafter till it is removed, and the cost of removal.

Historical: Rev. St. 1887, Sec. 971.
California Legislation: Same: Pol.

Code 1872, Sec. 2752; similar: Deering's Code, Sec. 2739; Kerr's Code, ib.

Same.

Sec. 955. Whoever cuts down a tree so that it falls into any highway, must forthwith remove the same, and is liable to a penalty of five dollars for every day the same remains in such highway.

Historical: Rev. St. 1887, Sec. 972.
California Legislation: Same: Pol.
 Code 1872, Sec. 2753; same except

"ten" for "five," line 3; Deering's Code, Sec. 2740; Kerr's Code, ib.

Notices on Bridges.

Sec. 956. The road overseers may put on bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to a fine of five dollars for each offense.

Historical: Rev. St. 1887, Sec. 973.
 "A fine of" inserted before "five dollars," in last line.

California Legislation: Same except
 "The commissioner of highways and

road overseers" for "The road overseers": Pol. Code 1872, Sec. 2754; similar: Deering's Code, Sec. 2741; Kerr's Code, ib.

Injury to Shade Trees.

Sec. 957. Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree planted and standing on any highway, forfeits twenty-five dollars for each such tree.

Historical: Rev. St. 1887, Sec. 974.
 See 13 Ter. Ses. (1885) 162, Sec. 36.
California Legislation: Same: Pol.

Code 1872, Sec. 2755; similar but forfeiture is \$100.00: Deering's Code, Sec. 2742; Kerr's Code, ib.

Disposition of Penalties and Forfeitures.

Sec. 958. All penalties or forfeitures given in this chapter, and not otherwise provided for, must be recovered by the road overseers of the respective road districts and be paid into the road fund.

Historical: Laws 1899, 127, 14; re-enacting Laws 1890-91, 190, Sec. 13. Omitting the last half of the section which related to the disposition of moneys in the district road funds, and the payment of warrants then out-

standing, at the time the act of which the section was originally a part should take effect. As the act has been effective for over seventeen years, the omitted portions are obsolete.

Local Laws Unaffected.

Sec. 959. Nothing in this chapter affects the provisions of any statute in relation to roads and highways now in force and made applicable to one or more counties by name; but whenever such statute is repealed, then the provisions of this chapter are applicable to the county named in the statute repealed.

Historical: Rev. St. 1887, Sec. 976. This section is probably altogether obsolete, but in the absence of authentic information or means of information, it was thought best to preserve it.

California Legislation: Same: Pol. Code 1872, Sec. 2757; repealed 1880.

Width of Highways Across Streams.

Sec. 960. All highways crossing or ending on any river, creek or stream, must be open the same width down to, and across said river, creek or stream, as they are before they reach said stream.

Historical: Rev. St. 1887, Sec. 977; amended act 15th Ter. Ses. (Laws 1888-89) 37, Sec. 1.

Passage-Ways for Stock.

Sec. 961. The passage-ways for stock under any road must be bridged with suitable plank not less than eighteen feet in length, and it shall be lawful for the fences of either side to converge to the bridge over said passage-way. The said passage-way must be kept securely bridged by the person who owns the adjoining lands, and must be kept in good repair by said owner. Said bridge shall not be placed more than one foot above the level of the roadway. The approaches to the bridge over said passage-way must also be kept in good repair by said owner.

Historical: Rev. St. 1887, Sec. 978; amended act 15th Ter. Ses. (Laws 1888-89) 37, Sec. 1.

Damages to Highways by Livestock.

Sec. 962. Any person or persons owning livestock or the employees, agent or agents of such owners of livestock, who shall drive, range or graze the same along or across the public highways or ditches, or who shall permit the same to range or graze along or across the public highways or ditches of this State, and thereby obstruct, or partially obstruct, the same by rolling rocks, brush or other debris therein, or destroy or injure any grades, ditches, bridges or approaches to bridges therein, shall, immediately thereafter, repair such highway or ditch, and the damage so done, at their own expense. Any such person or persons, employes, agent or agents, of such person or persons owning livestock, who shall wilfully refuse or neglect to repair any and all damage so done to the highways or ditches of this State, within five days thereafter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not less than twenty-five dollars, and not more than three hundred dollars or be imprisoned in the county jail for a period not exceeding six months, or be punished by both such fine and imprisonment.

Historical: Laws 1901, 185, Sec. 1. The phraseology of the last sentence

is slightly changed to make the same grammatical.

Bridges to Be Fortified for Traction Engines.

Sec. 963. It shall be unlawful for any person or persons to drive any steam traction or portable engine over any bridge or culvert on any public street or highway within this State, without using, on such bridge or culvert, for the purpose of securing its safety,

four stout pieces of plank, each of which shall be at least ten feet in length, one foot in width, and two inches in thickness; two of the said pieces of plank to be always under the wheels of said steam traction or portable engine while it shall be crossing said bridge or culvert. The penalty for the violation of any of the provisions of this section shall be a fine of not less than ten dollars nor more than fifty dollars for each offense, or imprisonment in the county jail not less than five nor more than ten days. In addition to said fine, any person causing damage to any said bridge or culvert, shall be liable to the county to which the said bridge or culvert shall belong, for all damages which may result from the crossing of such steam traction or portable engine.

Historical: Laws 1905, 94, Secs. 1, 2.

ARTICLE 9.

LEASING HIGHWAYS.

Section	Section
964. Commissioners may lease roads.	972. Leased road deemed a county road.
965. Order: Advertisement for bids.	973. Exemptions from toll.
966. Bids to be accompanied by bonds.	974. Cancellation and forfeiture of lease.
967. Contract for lease.	975. Persons and property liable to toll.
968. Same: Qualifications of sureties.	976. Contents of order and bids.
969. Condition of roads leased.	977. Opening of bids.
970. Toll gates.	978. Conditions of lease.
971. Rates of toll: Evasion of payment: Excess charges.	979. Liability to labor not discharged.

Commissioners May Lease Roads.

Sec. 964. Whenever a county road in any county in this State is so located that there is little or no local labor along the line or in the vicinity of said road, the board of county commissioners of the county where such road or any portion of the same is, or may hereafter be located, is authorized to lease such road, or any portion of the same, to any person or corporation, to open, improve and keep the same in repair for a period not exceeding five years, with the right in consideration thereof to collect and receive tolls for travel thereon in the manner provided in this article.

Historical: Rev. St. 1887, Sec. 986.
12 Ter. Ses. (1883) 50 Sec. 1, amended
13 Ter. Ses. (1885) 161, Sec. 1.

Order: Advertisement for Bids.

Sec. 965. Whenever it becomes expedient to lease a public road, or any specified section thereof, the county commissioners must make an order to that effect, specifying therein the termini thereof, and directing the clerk of the board of county commissioners to cause the same to be published in some newspaper published in the county if there be one, or if there be no newspaper published in the county, then in a newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will be received at such clerk's office until a particular hour of a certain day thereafter, and not more than ten

days after the expiration of the publication of such order and notice, for the leasing of such road.

Historical: Rev. St. 1887, Sec. 987.
12 Ter. Ses. (1883) 50, Sec. 2.

Bids to Be Accompanied by Bonds.

Sec. 966. No bids must be considered unless accompanied by an undertaking, executed by two or more sureties, in the sum of two thousand dollars, to be void upon the condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the undertaking to secure the performance thereof, as hereinafter provided.

Historical: Rev. St. 1887, Sec. 988.
12 Ter. Ses. (1883) 50, Sec. 3.

Contract for Lease.

Sec. 967. The contract for the lease must be subscribed by the lessee and approved by the county commissioners and filed with the clerk of the board. At the time of filing the contract, the lessee must give an undertaking to the county in a sum to be fixed by the county commissioners, not less than two thousand and not more than ten thousand dollars, with two or more sufficient sureties, to be void upon the condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this article.

Historical: Rev. St. 1887, Sec. 989.
Sec. 12 Ter. Ses. (1883) 50, Sec. 4.

Same: Qualifications of Sureties.

Sec. 968. The sureties in the undertaking mentioned in the last section must have the qualifications of bail upon arrest in civil actions, and must justify in like manner before the county commissioners or the clerk thereof.

Historical: Rev. St. 1887, Sec. 990.
12 Ter. Ses. (1883) 50, Sec. 5.

bail on arrest: Sec. 4256. Justification:
Sec. 4257.

Cross Reference: Qualifications of

Condition of Roads Leased.

Sec. 969. The road leased under this article must be cleared of standing timber, and have a track for traveling of the width, and be kept in the condition, and the streams or other waters on the line thereof must be bridged, or ferries established thereon, and must be made of such grade and of such materials, as the contract shall specify.

Historical: Rev. St. 1887, Sec. 991.
12 Ter. Ses. (1883) 50, Sec. 6.

Toll Gates.

Sec. 970. No toll must be collected for travel on such roads except at a gate, nor unless a sign board be posted at such gate in full view of the travel on the road, with the rates of toll plainly printed or painted thereon. The lease must specify the number of gates that may be placed on the road, and the location thereof, and thereafter the number of such gates must not be increased; but the county

commissioners, upon the application of the lessee, may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them.

Historical: Rev. St. 1887, Sec. 992.
12 Ter. Ses. (1883) 50, Sec. 7.

Rates of Toll: Evasion of Payment: Excess Charges.

Sec. 971. The rates of toll that the lessee may collect and receive must be specified in the lease, and none other must be charged; and any person who passes through a gate on such road without paying the toll legally chargeable thereat, or when traveling on such road, goes around such gate, with intent to avoid the payment of such toll, is liable to the lessee for three times the amount of such toll; and any lessee of such road, who, by himself, his agents or servants, collects or receives of any persons illegal toll for traveling on such road, is liable to such person for three times the amount of such toll.

Historical: Rev. St. 1887, Sec. 993.
12 Ter. Ses. (1883) 50, Sec. 8.

Leased Road Deemed a County Road.

Sec. 972. The road leased as provided in this article, is nevertheless to be deemed a county road, subject to the provisions of the lease.

Historical: Rev. St. 1887, Sec. 994.
12 Ter. Ses. (1883) 50, Sec. 9.

Exemptions From Toll.

Sec. 973. No footman can be required to pay toll for traveling on such road, nor any person while traveling from one portion of his or his employer's farm to another, with or without any stock or vehicle, or in going to or returning from church, a funeral or an election.

Historical: Rev. St. 1887, Sec. 995.
12 Ter. Ses. (1883) 50, Sec. 10.

Cancellation and Forfeiture of Lease.

Sec. 974. The county commissioners have authority, upon the application of the lessee, to cancel or modify the lease upon such terms as may be equitable and just; and the proper prosecuting attorney may maintain an action against the lessee in the name of the county to have such lease declared forfeited, whenever the lessee fails or neglects to comply with the provisions thereof, and of this article.

Historical: Rev. St. 1887, Sec. 996.
12 Ter. Ses. (1883) 50, Sec. 11.

Persons and Property Liable to Toll.

Sec. 975. Tolls are chargeable by the lessee upon the following items, or classes of persons, or property only:

1. Sheep and hogs;
2. Loose horses, mules, asses and cattle;
3. Man and riding animals and pack animals loaded;
4. Vehicles loaded or unloaded and drawn by one or more animals.

Historical: Rev. St. 1887, Sec. 997.
12 Ter. Ses. (1883) 50, Sec. 12.

Contents of Order and Bids.

Sec. 976. The order of the commissioners must specify the number of gates to be placed on the road, the grade of the road, the materials for the construction thereof, and the period for which the same is to be let. The bid must specify the rates of toll which the bidder is willing to accept for putting and maintaining the road in the condition according to the specifications in the order.

Historical: Rev. St. 1887, Sec. 998.
12 Ter. Ses. (1883) 50, Sec. 13.

Opening of Bids.

Sec. 977. Upon opening the bids, the lease must be awarded to the lowest bidder; but the county commissioners may, and it is their duty to, reject any or all bids when there appears sufficient cause therefor, and in such case they may subsequently re-advertise and let the same.

Historical: Rev. St. 1887, Sec. 999.
12 Ter. Ses. (1883) 50, Sec. 14.

Conditions of Lease.

Sec. 978. The commissioners must insert in every contract with a lessee of a road leased under this article, that the same must be cleared of standing timber for thirty feet in width of said road, and have a track in the center not less than sixteen feet wide, furnished and kept in good traveling condition, except where the cutting on said road is six feet or more deep on either side, where said track need not be more than ten feet wide, with turnouts of sixteen feet in width every quarter of a mile of such narrow track and of sufficient length to enable the teams traveling said road to pass each other conveniently, and that all streams and other waters on the line of such road be safely and securely bridged; they may also insert therein such condition for keeping the road open during the winter season, as they may deem reasonable or expedient.

Historical: Rev. St. 1887, Sec. 1000.
12 Ter. Ses. (1883) 50, Sec. 15.

Liability to Labor Not Discharged.

Sec. 979. The granting of any lease or leases under this article must not release any person liable to road labor from the performance thereof on the county roads not leased, or otherwise discharging the same in money in lieu of such labor.

Historical: Rev. St. 1887, Sec. 1001. | also 12 Ter. Ses. (1883) 54, Secs. 1, 2
12 Ter. Ses. (1883) 50, Sec. 16; see | and 13 Ter. Ses. (1885) 161, Sec. 1.

CHAPTER 3.

TOLL ROADS.

Article

1. Construction of toll roads.
2. Construction of toll roads for traction engines.

Article

3. Use of toll roads.
4. Inspection and repair.

ARTICLE 1.

CONSTRUCTION OF TOLL ROADS.

- Section
- 980. Application to construct road.
 - 981. Hearing on application.
 - 982. Order granting application.
 - 983. Appointment of commissioners.
 - 984. Duties of commissioners.
 - 985. Compensation of commissioners.
 - 986. Branches and extensions.
 - 987. Purchase and condemnation of land.
 - 988. Disposition of damages for highways taken.
 - 989. Construction without application.
 - 990. Orchards and gardens protected.

- Section
- 991. Bridging streams.
 - 992. Use of road of other company.
 - 993. Regulations governing construction.
 - 994. Same: Relaying with broken stone.
 - 995. Same: Guide posts.
 - 996. Completion and inspection.
 - 997. Erection of toll gates.
 - 998. Rates of toll: License fee.
 - 999. Bond of applicant.
 - 1000. Abandonment of road.
 - 1001. County may purchase road.
 - 1002. Appraisement and award.

Application to Construct Road.

Sec. 980. If all lands necessary for the roadbed and other purposes are not otherwise acquired as hereinafter provided, the company proposing to construct a toll road through any part of a county, must publish a notice in some newspaper published therein, and if none, then in the newspaper nearest thereto, once in each week for six successive weeks, specifying the character of the road, the termini, and each town, city, or village through which it is proposed to construct it, and the time when the application hereinafter required will be made. After such notice is complete, on the day specified therein, application must be made to the board of commissioners of the county for authority to take the necessary land and to construct the road described in the notice.

Historical: Rev. St. 1887, Sec. 1020.
California Legislation: Same except "supervisors" for "commissioners";

Pol. Code 1872, Sec. 2779; Deering's Code, ib; Kerr's Code, ib.

Hearing on Application.

Sec. 981. On the hearing all residents of the county and others interested may appear and be heard. The board may take testimony, or authorize it to be taken by any officer of the county, and adjourn the hearing from time to time.

Historical: Rev. St. 1887, Sec. 1021.
California Legislature: Same: Pol.

Code 1872, Sec. 2781; Deering's Code, ib.; Kerr's Code, ib.

Order Granting Application.

Sec. 982. If it appears to the board of commissioners that the public interests will be promoted thereby, a majority of all the members thereof may grant the application, and by order authorize the company to take the real property necessary, and appoint two road commissioners to lay out the road, who are disinterested either in the company or in any land sought to be taken or adjoining thereto. A copy of this order must be recorded in the county recorder's office before action under it is had.

Historical: Rev. St. 1887, Sec. 1022.

California Legislation: Same except "supervisors" for "commissioners," line 1; "road" omitted before "com-

missioners," line 4; "clerk" for "recorder," next to last line: Pol. Code 1872, Sec. 2782; Deering's Code, ib.; Kerr's Code, ib.

Appointment of Commissioners.

Sec. 983. If the road extends into more than one county, the application must specify their names, and the board of commissioners of each of such counties must appoint road commissioners to act in their respective counties with the commissioner and surveyor of the company. The company must appoint one commissioner of like qualifications as those appointed by the board of commissioners, and furnish a surveyor to accompany and act with them.

Historical: Rev. St. 1887, Sec. 1023.

California Legislation: Same except "board of supervisors" for "board of commissioners," and "route" for

"road," line 1; "road" omitted before "commissioners," line 3: Pol. Code 1872, Sec. 2783; Deering's Code, ib.; Kerr's Code, ib.

Duties of Commissioners.

Sec. 984. The road commissioners must take the oath of office, and view and lay out the road as in their judgment will best promote the public interest. They must hear all persons interested, and may take testimony; they may determine the breadth of the way, not exceeding one hundred feet, except where the company acquire a greater breadth by grant. They must make, sign, and certify an accurate survey and description of the route and of the land necessary for the road, buildings, and gates in each county, and record the same in the office of the county recorder thereof. When the breadth of the road is not fixed by the road commissioners, it may be fixed by the board of commissioners of the county.

Historical: Rev. St. 1887, Sec. 1024.

California Legislation: Similar: Pol.

Code 1872, Sec. 2784; Deering's Code, ib.; Kerr's Code, ib.

Compensation of Commissioners.

Sec. 985. The company must pay to each road commissioner his expenses and four dollars a day for his services; cause their surveyor to make the map of the proposed road, which, when approved and certified by the road commissioners, must be filed with the report in the office of the clerk of the board of county commissioners, and recorded.

Historical: Rev. St. 1887, Sec. 1025.

California Legislation: Same except "road" omitted before "commissioners," lines 1 and 4, and "supervisors"

for "commissioners": Pol. Code 1872, Sec. 2785; Deering's Code, ib.; Kerr's Code, ib.

Branches and Extensions.

Sec. 986. The directors of any such company may, with the written consent of the holders of two-thirds of the stock, proceed in the manner prescribed by the preceding six sections to construct branches to their road, or to extend it or alter any part of its route or branches.

Historical: Rev. St. 1887, Sec. 1026.

California Legislation: Same except "seven" for "six" sections, line 3: Pol.

Code 1872, Sec. 2786; Deering's Code, ib.; Kerr's Code, ib.

Purchase and Condemnation of Land.

Sec. 987. Lands necessary for the purposes of the road or appurtenances may be acquired by purchase or condemnation. Lands within any highway may be granted by the board of commissioners or city authorities on such terms and for such sums as may be agreed upon.

Historical: Rev. St. 1887, Sec. 1027.

California Legislation: Same except "supervisors or town" for "commis-

sioners," line 3: Pol. Code 1872, Sec. 2787; Deering's Code, ib.; Kerr's Code, ib.

Dispositions of Damages for Highways Taken.

Sec. 988. When the road company desires the exclusive use of lands forming part of the highway, and such use is granted by the county commissioners, the damages received therefor are to be paid to the road fund of the county in which the same is situated.

Historical: Laws 1899, 127, Sec. 15; re-enacting Laws 1890-91, 190, Sec. 14.

Construction Without Application.

Sec. 989. When the company has obtained all the lands necessary in any county, by purchase or agreement, the road may be constructed without making the application to the board of commissioners hereinbefore provided for; but before proceeding to do so an accurate survey of such part of the road must be made by a practical surveyor, signed and sworn to by the president and secretary, and recorded in the county recorder's office; and if the road extends into another county, authority to construct the road there must first be obtained.

Historical: Rev. St. 1887, Sec. 1029.

California Legislation: Same except "supervisors" for "commissioners,"

line 3; "clerk's" for "recorder's," line 7: Pol. Code 1872, Sec. 2789; Deering's Code, ib.; Kerr's Code, ib.

Orchards and Gardens Protected.

Sec. 990. No such road must be laid out through any orchard of four years' growth, to the injury of the fruit trees, or any garden of four years' cultivation, or any dwelling house or building connected with a dwelling house or any yard or inclosure necessary thereto, without the consent of the owner.

Historical: Rev. St. 1887, Sec. 1030.

California Legislation: Same: Pol.

Code 1872, Sec. 2790; Deering's Code, ib.; Kerr's Code, ib.

Bridging Streams.

Sec. 991. The road company may bridge any stream or river on the route of their road, when not within the limits prescribed by law for the erection and maintenance of any other bridge, and in bridging streams used for rafting lumber, the bridge must be so constructed as not to prevent or endanger the passage of any raft forty feet in width.

Historical: Rev. St. 1887, Sec. 1031.

California Legislation: Same: Pol.

Code 1872, Sec. 2791; Deering's Code, ib.; Kerr's Code, ib.

Use of Road of Other Company.

Sec. 992. No plank road company must construct its road on the

road of another company, except in case of crossings, without consent of the latter.

Historical: Rev. St. 1887, Sec. 1032.
California Legislation: Same: Pol.

Code 1872, Sec. 2792; Deering's Code, ib.; Kerr's Code ib.

Regulations Governing Construction.

Sec. 993. Every such road must be laid out at least fifty feet wide. The track of plank roads must be constructed eighteen feet wide, of timber, plank or other hard material. The track of turnpikes must be bedded with stone, gravel, or such other hard material found on the line thereof, to the width of eighteen feet, and faced with broken stone or gravel. The common wagon road must be graded at least twelve feet in width, and so constructed with necessary turn-outs as to permit vehicles to pass each other conveniently. All the roads must be ditched on the sides when practicable, and have proper and necessary sewerage, and be so constructed that vehicles may pass on and off the track at all intersections of roads.

Historical: Rev. St. 1887, Sec. 1033.
California Legislation: Same: Pol.

Code 1872, Sec. 2793; Deering's Code, ib.; Kerr's Code, ib.

Same: Relaying With Broken Stone.

Sec. 994. Every company that has once laid their road with plank may relay it or any part of it with broken stone, gravel, or other hard material whereby they keep a good, substantial road.

Historical: Rev. St. 1887, Sec. 1034.
California Legislation: Same except "shells" inserted after "gravel," line 2:

Pol. Code 1872, Sec. 2794; Deering's Code, ib.; Kerr's Code, ib.

Same: Guide Posts.

Sec. 995. A guide post must be erected at every place where the road is intersected by a public road, with an inscription showing the name of the place to which such intersecting road leads, in the direction to which the name on the guide post points.

Historical: Rev. St. 1887, Sec. 1035.
California Legislation: Same: Pol.

Code 1872, Sec. 2796; Deering's Code, ib.; Kerr's Code, ib.

Completion and Inspection.

Sec. 996. When the road, or three consecutive miles thereof, is completed, the road overseer, or other person thereto specially appointed by the board of commissioners of the county, must inspect the road when requested, and if satisfied that the road conforms to the requirements of the law, must certify to the facts, and file the certificate in the office of the county recorder; for such service four dollars per day must be paid by the company to the inspector or overseer. When only three miles of any plank road are completed, if it is not the entire road, tolls must not be collected thereon for more than one year, unless the road or five consecutive miles are completed within the year.

Historical: Rev. St. 1887, Sec. 1036.
California Legislation: Similar: Pol.

Code 1872, Sec. 2297; Deering's Code, ib.; Kerr's Code, ib.

Erection of Toll Gates.

Sec. 997. When the certificate of completion is filed, toll gates may be erected and tolls collected. No toll gate, toll house, or other building must be put up within ten rods of the front of any dwelling house, barn or outhouse, without written consent of the owner thereof.

Historical: Rev. St. 1887, Sec. 1037.

California Legislation: Same: Pol.

Code 1872, Sec. 2798; Deering's Code, ib.; Kerr's Code, ib.

Rates of Toll: License Fee.

Sec. 998. The board of county commissioners must fix and regulate the rates of toll for all franchises granted under the provisions of this chapter within the limits of their respective counties, having due regard to the cost of construction, magnitude of structure and expenses incident thereto, and in keeping the same in good repair. The board of commissioners must also tax such sum as may appear reasonable, not less than twenty-five dollars nor more than two hundred dollars per annum, for each license granted; and the person or parties to whom such license is granted, must pay to the county treasurer the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt the clerk of the board of commissioners must issue such license, with a statement of the rates of toll as fixed, under seal of the board of commissioners.

Historical: Rev. St. 1887, Sec. 1038.

2 Ter. Ses. (1864) 440, Sec. 5.

Bond of Applicant.

Sec. 999. Every company applying for a license to keep a toll road must, before the same is issued, enter into a bond with one or more sureties, to be approved by the clerk of the board of commissioners in any sum not less than one thousand nor more than ten thousand dollars, conditioned that such company will keep said road in all respects according to law; and if default at any time be made in the condition of such bond, damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction.

Historical: Rev. St. 1887, Sec. 1039.

2 Ter. Ses. (1864) 440, Sec. 6; amend-

ed 11 Ter. Ses. (1881) 292, Sec. 1.

Abandonment of Road.

Sec. 1000. Whenever the holders of two-thirds of the stock consent, the directors of any company may abandon the whole or any part of their road at either or both ends, by written surrender thereof, attested by their seal, and acknowledged by the president and secretary as a deed or grant is acknowledged, and recorded in the recorder's office of each county, where the surrendered road lies; thereafter the surrendered road belongs to the road districts in which it lies, but the company may continue to take toll on any three consecutive miles in length not so surrendered.

Historical: Rev. St. 1887, Sec. 1040.

California Legislation: Same except "clerk's" for "recorder's," line 5: Pol.

Code 1872, Sec. 2799; Deering's Code, ib.; Kerr's Code, ib.

County May Purchase Road.

Sec. 1001. At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chapter, the county within which the road or any part thereof is located, may purchase the same at a fair cash valuation, to be fixed by seven commissioners, all disinterested persons, three to be appointed by the board of commissioners of the county, three by the owner of the road, and the seventh by the probate judge, who must estimate the fair cash value of the road and make report thereof under oath to the board of commissioners. If within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road or his authorized managing agent, the right of the owner to take tolls on the road is terminated, and the road becomes the property of the county.

Historical: Rev. St. 1887, Sec. 1041.	Deering's Code, ib.; further amended:
California Legislature: Similar: Pol. Code 1872, Sec. 2800; as amended:	Kerr's Code, ib.

Appraisement and Award.

Sec. 1002. A majority of the commissioners mentioned in the preceding section constitutes a quorum, and the concurrence of a majority in making the estimate and award is binding upon the road owner if approved by the board of commissioners. The commissioners must make their report within thirty days after their appointment, and if approved the tender of the amount of the appraisement and award must be made by the county treasurer. Whether the owner conveys the road to the county or not, the report and tender operate as a conveyance to the county of the road and all its incidents and appurtenances.

Historical: Rev. St. 1887, Sec. 1042.	Pol. Code 1872, Sec. 2801; Deering's
California Legislation: Same except "supervisors" for "commissioners":	Code, ib.; Kerr's Code, ib.

ARTICLE 2.

CONSTRUCTION OF TOLL ROADS FOR TRACTION ENGINES.

Section	Section
1003. Application to construct.	1005. Statement of expense.
1004. Hearing of application.	1006. Rules and regulations.

Application to Construct.

Sec. 1003. Any person, company or corporation proposing to construct a road, or to improve any public road or part thereof, for the purpose of using on such road traction engines for the transporting of heavy freight, must publish a notice in some newspaper of the county in which said proposed road or major portion thereof is situated, for two consecutive weeks, specifying the location of such road and the time and place, when and where application will be made for the license to charge toll on such roads to any person, company or corporation using the same for the purpose above set forth. After notice is given, application must be made in writing to the board of county commissioners of the county in which said road or major portion thereof is located, describing the location of said road,

and the general character of the proposed construction or improvement.

Historical: Laws 1907, 306, Sec. 1.

Hearing of Application.

Sec. 1004. At the hearing of such application, proof of giving notice as required in the preceding section must be made, and the board of commissioners may then grant such application.

Historical: Laws 1907, 306, Sec. 2.

Statement of Expense.

Sec. 1005. Any person, company or corporation constructing or improving roads under the provisions of this article, shall furnish to the board of county commissioners a sworn statement of the items of expense incurred in such work.

Historical: Laws 1907, 306, Sec. 3.

Rules and Regulations.

Sec. 1006. The board of commissioners shall make all needful rules and regulations for the control of such roads, prescribing what rates of toll shall be charged thereon, and fixing penalties for the violation of regulations: *Provided*, That nothing in this article contained shall be construed to empower the granting of a license to charge toll for any purpose except as herein specifically set forth; and, *Further Provided*, That no license to collect toll on such road shall be granted for a longer period than seven years.

Historical: Laws 1907, 306, Sec. 4.

ARTICLE 3.

USE OF TOLL ROADS.

Section

1007. Exemptions from toll.

Exemptions From Toll.

Sec. 1007. The following persons, and none other, are exempt from payment of toll on wagon, turnpike, or plank roads:

1. Persons going to or from any funeral, and all funeral processions;
2. Troops in actual service of the State, or of the United States;
3. Persons going to or from the court house in obedience to a subpoena in a criminal action.
4. Persons living within a mile of any gate by the most usually traveled road may pass it at one-half toll, when not engaged in the transportation of others, or the property of others;
5. Farmers living on their farms within one mile of any gate by the most usually traveled road may pass free when going to or from their work on such farms;
6. School children attending school within three miles of their parents' or boarding houses.

Historical: Rev. St. 1887, Sec. 1050.

California Legislation: Same except "and persons going to or from a militia training which by law they are re-

quired to attend" added to Subd. 2: Pol. Code 1872, Sec. 2814; similar as amended: Deering's Code, *ib.*; Kerr's Code, *ib.*

ARTICLE 4.
INSPECTION AND REPAIR.

Section	Section
1008. Complaint to road overseer.	1011. Prosecution of company.
1009. Gates ordered opened.	1012. Fees of overseer.
1010. Defects in road: Notice to company.	

Complaint to Road Overseer.

Sec. 1008. Every road overseer of the district to whom complaint in writing is made that any part of a wagon, turnpike, or plank toll road in his county or district, or any part of such road the gate nearest to which is in his county or district, is out of repair, must examine it without delay and give notice of the defect, particularly describing the same, to the person attending the gate nearest thereto; if the necessary repair is not made or defect remedied within three days after such notice is given, the road overseer may order such gate to be thrown open.

Historical: Rev. St. 1887, Sec. 1055.

California Legislation: Same except "commissioner of highways or" in-

serted before "road overseer": Pol. Code 1872, Sec. 2827; Deering's Code, ib.; Kerr's Code, ib.

Gates Ordered Open.

Sec. 1009. A gate so ordered to be thrown open must not be shut nor any toll collected thereat until the road overseer ordering it shut grants a certificate that the road is in sufficient repair, and that the gate ought to be closed. The company and their gate keeper or other employee, violating or permitting the violation of this section, or the order made under the preceding section, are each liable in a penalty of twenty-five dollars for each offense, to be recovered by the party aggrieved.

Historical: Rev. St. 1887, Sec. 1056.

California Legislation: Same except "commissioner of highways or" insert-

ed before "road overseer": Pol. Code 1872, Sec. 2828; Deering's Code, ib.; Kerr's Code, ib.

Defects in Road: Notice to Company.

Sec. 1010. Every road overseer who discovers a defect in any toll road in his county or district, or a gate placed in a situation contrary to law, must give written notice thereof to one or more of the directors or managing agents of the company, requiring the defective road to be repaired or the gate to be removed within a specified time; and may order that in the meantime such gates as he specifies be thrown open.

Historical: Rev. St. 1887, Sec. 1057.

California Legislation: Same except "commissioner of highways or" insert-

ed before "road overseer": Pol. Code 1872, Sec. 2829; Deering's Code, ib.; Kerr's Code, ib.

Prosecution of Company.

Sec. 1011. If the notice and requirements are not obeyed, the road overseer must make immediate complaint to the prosecuting attorney of the county, who must prosecute the company therefor in the name of the State for so suffering the road to be out of repair, or of having placed any gate in a situation contrary to the law; and if convicted

thereof, the company must be fined not exceeding two hundred and fifty dollars.

Historical: Rev. St. 1887, Sec. 1058. California Legislation: Same except "the commissioner of highways or road overseer" for "the road over-	seer," line 1, and "people" for "state," line 4: Pol. Code 1872, Sec. 2830; Deering's Code, ib.; Kerr's Code, ib.
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Fees of Overseer.

Sec. 1012. The road overseer complaining to the prosecuting attorney, or who makes inspection and discovers defects in the road, is entitled to three dollars for each day's services in inspecting the road or necessarily expended in prosecuting the action therefor, to be paid in case of conviction, as costs. When no action is had, but repairs are made, or gate removed, on the inspection and requirement of the road overseer, the toll gatherer nearest the road so out of repair, or the gate to be moved, must pay the fees hereinbefore specified out of the tolls collected; if he refuse to pay the same, the same may be recovered by action with costs.

Historical: Rev. St. 1887, Sec. 1059. California Legislation: Same except "commissioner of highways or" in-	serted before "road overseer": Pol. Code 1872, Sec. 2831; Deering's Code, ib.; Kerr's Code, ib.
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CHAPTER 4.

PUBLIC FERRIES AND TOLL BRIDGES.

Article	Article
1. General provisions.	3. Toll ferries.
2. Toll bridges.	

ARTICLE 1.

GENERAL PROVISIONS.

Section	Section
1013. Application to construct.	1021. Bridges and ferries connecting counties.
1014. Proof of notice.	1022. Disqualification of county commissioners.
1015. Grant of authority.	1023. Distance between bridges and ferries.
1016. Regulation of license tax and tolls.	1024. Condemnation of land.
1017. Report of keeper.	1025. Posting rates of tolls.
1018. Ascertainment of license and toll rate.	1026. Disposal of license money
1019. Same: Fixing rate.	1027. Care of banks.
1020. Conditions of bond.	

Application to Construct.

Sec. 1013. When authority to construct a toll bridge or to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of that county situated on the right bank descending such river, creek, or slough.

Historical: Rev. St. 1887, Sec. 1070. See 3 Ter. Ses. (1866) 180, Sec. 1. California Legislation: Same except "supervisors" for "commissioners," line 3; "left" for "right," line 4; "bay, river, creek, slough, or arm of the sea" for "river, creek or slough," line	4: Pol. Code 1872, Sec. 2843; Deering's Code, ib.; Kerr's Code, ib. Cross Reference: Corporations not to take tolls until authority is granted by the county commissioners: Sec. 2830.
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Proof of Notice.

Sec. 1014. The board of commissioners must not grant authority to construct or erect a toll bridge or ferry until the notice of such intended application has been given as respectively required in Articles 2 and 3 of this chapter.

Historical: Rev. St. 1887, Sec. 1071.

California Legislation: Same except "supervisors" for "commissioners,"

line 1: Pol. Code 1872, Sec. 2844; Deering's Code, ib.; Kerr's Code, ib.

Grant of Authority.

Sec. 1015. The board of commissioners granting authority to construct a toll bridge or to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the bridge or ferry for the benefit of the county and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof;

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually;

3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year;

4. Make all necessary orders relative to the construction, erection, and business of licensed toll bridges or ferries which they have by law the power to make.

The board of commissioners may, at any time they see fit, authorize fords across any water within any distance of any licensed toll bridge or ferry.

Historical: Rev. St. 1887, Sec. 1072.

California Legislation: Same except "supervisors" for "commissioners," and "and maintain" inserted after "au-

thorize," last paragraph: Pol. Code 1872, Sec. 2845; Deering's Code, ib.; Kerr's Code, ib.

Regulation of License Tax and Tolls.

Sec. 1016. The license tax and rate of toll fixed as provided in the preceding section may be increased or diminished, at any time, when it is shown to the satisfaction of the board of commissioners that the receipts from tolls any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the board of commissioners must not exceed ten per cent of the tolls annually collected.

Historical: Rev. St. 1887, Sec. 1073.

California Legislation: Similar: Pol.

Code 1872, Sec. 2846; Deering's Code, ib.; Kerr's Code, ib.

Report of Keeper.

Sec. 1017. Every owner or keeper of a toll bridge or ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

- 1. The actual cost of the construction or erection, and equipment of the toll bridge or ferry;
- 2. The repairs made during the preceding year, and the actual cost thereof;
- 3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business;
- 4. The amount of tolls collected; and,
- 5. The estimated actual cash value of the bridge or ferry, exclusive of the franchise.

Historical: Rev. St. 1887, Sec. 1074.	line 2: Pol. Code 1872, Sec. 2847;
California Legislation: Same except	Deering's Code, ib.; Kerr's Code, ib.
"supervisors" for "commissioners."	

Ascertainment of License and Toll Rate.

Sec. 1018. Whenever the board of commissioners are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county.

Historical: Rev. St. 1887, Sec. 1075.	line 1, but with additional provisions:
California Legislation: Same except	Pol. Code 1872, Sec. 2848; Deering's
"supervisors" for "commissioners,"	Code, ib.; Kerr's Code, ib.

Same: Fixing Rate.

Sec. 1019. When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the board must, on such ascertained amount, fix the annual license tax, rate of tolls, and the amount of the penal bond, and direct a license to be issued by the clerk.

Historical: Rev. St. 1887, Sec. 1076.	Code 1872, Sec. 2849; Deering's Code,
California Legislation: Same: Pol.	ib.; Kerr's Code, ib.

Conditions of Bond.

Sec. 1020. The bond required of the owner or keeper of the toll bridge or ferry, must be in the sum fixed by the board of commissioners, between one thousand and ten thousand dollars, with one or more sureties, and conditioned that the toll bridge or ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the State and all legal orders of the board of commissioners regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at, or defect in, such bridge or ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the board and filed with the clerk of the board of commissioners.

Historical: Rev. St. 1887, Sec. 1077.	omitted, and "president" for "board,"
California Legislation: Same except	next to last line: Pol. Code 1872, Sec.
"supervisors" for "commissioners"	2850; Deering's Code, ib.; Kerr's
throughout; "between one thousand	Code, ib.
and ten thousand dollars," line 3,	

Bridges and Ferries Connecting Counties.

Sec. 1021. The license tax of a ferry or bridge connecting two counties must be paid to the treasurer of the county granting it, and the license issued by the auditor thereof; but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the bridge or ferry is located, one-half the sum so received annually, or the auditor may issue the license on filing with him receipts for their respective halves of the tax taken from the treasurer of each of the two counties.

Historical: Rev. St. 1887, Sec. 1078.

California Legislation: Same: Pol.

Code 1872, Sec. 2851; Deering's Code, ib.; Kerr's Code, ib.

Disqualification of County Commissioner.

Sec. 1022. When a commissioner is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, the probate judge of the county must act in his stead.

Historical: Rev. St. 1887, Sec. 1079.

California Legislation: Same except "supervisor" for "commissioner," line 1, and "county" for "probate," line 3:

Pol. Code 1872, Sec. 2852; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Distance Between Bridges and Ferries.

Sec. 1023. No toll bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll bridge, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereafter required, notice of intention to apply for authority to erect a toll bridge or ferry, as in this section provided, must be served upon the proprietor of the ferry or toll bridge already established at least ten days prior thereto, giving the time and place and grounds of such application.

Historical: Rev. St. 1887, Sec. 1080.

California Legislation: Same: Pol. Code 1872, Sec. 2853; Deering's Code, ib.; Kerr's Code, ib.

Cited: Evans v. Kroutinger (1903) 9 Ida. 153; 72 Pac. 882.

Condemnation of Land.

Sec. 1024. When there are lands necessary for the construction, erection or use of such bridge or ferry which cannot be procured by agreement between the owner or corporation and the land owner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

Historical: Rev. St. 1887, Sec. 1081.

California Legislation: Same: Pol.

Code 1872, Sec. 2855; Deering's Code, ib.; Kerr's Code, ib.

Posting Rates of Tolls.

Sec. 1025. Every licensed toll bridge or ferry must have the rates of toll, as fixed by the board of commissioners, printed or written, posted up in some conspicuous place on or near the bridge or ferry.

Historical: Rev. St. 1887, Sec. 1082. See 2 Ter. Ses. (1864) 440, Sec. 8.

California Legislation: Same except

"supervisors" for "commissioners," line 2: Pol. Code 1872, Sec. 2856; Deering's Code, ib.; Kerr's Code, ib.

Disposal of License Money.

Sec. 1026. The proceeds of the license tax on ferries and toll bridges must be paid into the county treasury for the use of roads and highways, or may be used by the board of commissioners at any time in the purchase of toll roads and toll bridges.

Historical: Rev. St. 1887, Sec. 1083.

California Legislation: Same except "Supervisors" for "commissioners,"

line 3: Pol. Code 1872, Sec. 2857; Deering's Code, ib.; Kerr's Code, ib.

Care of Banks.

Sec. 1027. All ferry and toll bridge keepers must keep the banks of the streams or waters at the landings of their ferries and bridges graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county.

Historical: Rev. St. 1887, Sec. 1084.

California Legislation: Same: Pol.

Code 1872, Sec. 2858; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 2.**TOLL BRIDGES.****Section**

- 1028. Application to construct.
- 1029. Hearing of application.
- 1030. Order granting application.
- 1031. Same: Additional requirements.
- 1032. Use of highways.

Section

- 1033. Completion of bridge.
- 1034. Exemptions from tolls.
- 1035. Penalty for avoiding tolls.
- 1036. County may purchase bridge.

Application to Construct.

Sec. 1028. Every applicant for authority to construct a toll bridge must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therein, in an adjoining county, once in each week for six successive weeks, specifying the location, the length and breadth of the bridge, and the time at which the application hereinafter required will be made. After notice is given, application must be made to the board of commissioners of the proper county, at any meeting specified in the notice, for authority to construct it.

Historical: Rev. St. 1887, Sec. 1090.

California Legislation: Same except "supervisor" for "commissioners";

Pol. Code 1872, Sec. 2870; Deering's Code, ib.; Kerr's Code, ib.

Hearing of Application.

Sec. 1029. On the hearing, any person may appear and be heard. The board may take testimony or authorize it to be taken by any judicial officer of the county; and it may adjourn the hearing from time to time. A copy of the articles of incorporation, certified by the Secretary of State or by the clerk where they are filed, must be attached to and filed with the application, if made by a corporation.

Historical: Rev. St. 1887, Sec. 1091.

California Legislation: Same: Pol.

Code 1872, Sec. 2871; Deering's Code, ib.; Kerr's Code, ib.

Order Granting Application.

Sec. 1030. If the board are of the opinion that the public interests

will be promoted thereby, it may, by the assent of a majority of all the members of the board, grant the application by an order entered in its minutes, and particularly describing the bridge. The applicant must cause a certified copy of the order, with a copy of the application, to be recorded in the office of the recorder of the county, before proceeding under it.

Historical: Rev. St. 1887, Sec. 1092.

California Legislation: Same except "clerk" for "recorder," line 6: Pol.

Code 1872, Sec. 2872; additional provision as amended: Deering's Code, ib.; Kerr's Code, ib.

Same: Additional Requirements.

Sec. 1031. The board of commissioners may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character, or description, and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued.

Historical: Rev. St. 1887, Sec. 1093.

California Legislation: Same except "supervisors" for "commissioners,"

line 1: Pol. Code 1872, Sec. 2873; Deering's Code, ib.; Kerr's Code, ib.

Use of Highways.

Sec. 1032. The corporation or bridge owner may use, in such manner as prescribed by the board, so much of any public road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll houses.

Historical: Rev. St. 1887, Sec. 1094.

California Legislation: Same: Pol.

Code 1872, Sec. 2874; Deering's Code, ib.; Kerr's Code, ib.

Completion of Bridge.

Sec. 1033. Every bridge erected under these provisions must have good and substantial railings or sidings, at least four and a half feet high. When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the chairman of the board of commissioners, and filed in the county recorder's office, in the county or counties in which it is located, the owner may erect a toll gate at such bridge, and require such tolls as the boards of commissioners of the county or counties from time to time prescribe. A license therefor must be issued by the auditor of the county on giving the necessary bond and paying the license tax fixed therefor.

Historical: Rev. St. 1887, Sec. 1095.

California Legislation: Same except "the commissioner of highways or president of the board of supervisors" for "the chairman of the board of

commissioners," line 5; "clerk's" for "recorder's," line 5, and "supervisors" for "commissioners," line 8: Pol. Code 1872, Sec. 2878; Deering's Code, ib.; Kerr's Code, ib.

Exemptions From Tolls.

Sec. 1034. Any person going to or from a funeral, school, performing highway labor, or court which by law he is required to attend as a witness in a criminal case, is exempt from the payment of tolls.

Historical: Rev. St. 1887, Sec. 1096.
California Legislation: Same except
"or attending a military parade" in-

serted after "labor," line 2: Pol. Code
1872, Sec. 2879; Deering's Code, ib.;
Kerr's Code, ib.

Penalty for Avoiding Tolls.

Sec. 1035. Any person liable to pay toll, forcibly or fraudulently passing the gate of a toll bridge without paying the toll, is liable to a penalty of ten dollars in addition to the damages caused, to be recovered by the owner.

Historical: Rev. St. 1887, Sec. 1097.
California Legislation: Same: Pol.

Code 1872, Sec. 2880; Deering's Code,
ib.; Kerr's Code, ib.

County May Purchase Bridge.

Sec. 1036. Within the same time, in like manner, and to the same effect as toll roads are purchased under the provisions of the last chapter, the county or counties, jointly acting, in which the same is situated, may purchase a toll bridge constructed under the provisions of this chapter.

Historical: Rev. St. 1887, Sec. 1098.
California Legislation: Same except
"Sections 2802 and 2803" for "the last
chapter," line 2: Pol. Code 1872, Sec.

2881; Deering's Code, ib.; Kerr's Code,
ib.

Cross Reference: Purchase of toll
roads: Secs. 1001-1002.

ARTICLE 2.

TOLL FERRIES.

- Section**
1037. Application to construct.
1038. Hearing and order.

- Section**
1039. Regulation of ferries.
1040. Disposal of penalties.

Application to Construct.

Sec. 1037. Every applicant for authority to erect and take tolls on a public ferry, must publish a notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, for four successive weeks, specifying the location and the time and place, when and where the application will be made. After notice is given, application must be made in writing, under oath, to the board of commissioners of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and, if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

Historical: Rev. St. 1887, Sec. 1105.
California Legislation: Same except
"and by posting three notices in three
public places in the township" inserted

after "county," line 5, and "super-
visors" for "commissioners," line 8:
Pol. Code 1872, Sec. 2892; Deering's
Code, ib.; Kerr's Code, ib.

Hearing and Order.

Sec. 1038. At the hearing, proof of giving the notice as required by the preceding section, must be made, and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, authority to erect and take tolls on the ferry may be granted to him.

Historical: Rev. St. 1887, Sec. 1106.
California Legislation: Similar: Pol.

Code 1872, Sec. 2893; Deering's Code, ib.; Kerr's Code, ib.

Regulation of Ferries.

Sec. 1039. The board of commissioners may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character, and how propelled;
2. The number of hands, boatmen or ferrymen to be employed. and rules for their government;
3. How many trips to be made daily;
4. When and under what circumstances to make trips in the night time;
5. Who must be ferried free of toll;
6. In what cases of danger or peril not to cross;
7. Penalties for violation of regulations;
8. In case of steamboats, the rate of speed;
9. The method of and preference in loading and crossing; and,
10. How and by whom action must be brought to recover penalties.

Historical: Rev. St. 1887, Sec. 1107.
California Legislation: Same except "supervisors" for "commissioners,"

line 1: Pol. Code 1872, Sec. 2894; Deering's Code, ib.; Kerr's Code, ib.

Disposal of Penalties.

Sec. 1040. Penalties recovered under this article must be paid to the county treasury for the use of the general road fund of the county.

Historical: Rev. St. 1887, Sec. 1108.
California Legislation: Same: Pol.

Code 1872, Sec. 2895; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 5.

MISCELLANEOUS PROVISIONS RELATING TO TOLL ROADS, BRIDGES AND FERRIES.

Section	Section
1041. Franchises deemed real property.	1046. Revocation of license.
1042. Liability to execution.	1047. Exclusiveness of right.
1043. Same: Attachment.	1048. Liability for damages: Lien for tolls.
1044. Same: Purchaser to give bond.	
1045. Keeping without license: Penalty.	

Franchises Deemed Real Property.

Sec. 1041. For all purposes connected with the collection of debts, dues or demands, or the enforcement of obligations, a franchise for the building of bridges, the construction of roads or the maintenance of ferries, is deemed real property, and controlled by the rules governing the same.

Historical: Rev. St. 1887, Sec. 1120.
4 Ter. Ses. (1867) 64, Sec. 1.

Liability to Execution.

Sec. 1042. All rights or franchises to build, construct, or maintain roads, ferries or bridges, and charge toll thereon, or receive any compensation from the public for the use of the same, are subject, in like manner as real property, to the payment or satisfaction of any judgment rendered in a suit to enforce the collection or satisfaction of any debt, due, demand or obligation heretofore contracted, or which may hereafter be contracted.

Historical: Rev. St. 1887, Sec. 1121.
See 4 Ter. Ses. (1867) 64, Sec. 2.

Same: Attachment.

Sec. 1043. All right, title or interest, claim, property or demand, in and to such franchise, road, bridge or ferry, may be attached in the same manner in which real property may be attached, in any suit against any person to whom said described franchises have been granted or conveyed, and the right, title and interest, property, claim and demand of said person, may be levied upon and sold under execution, to satisfy any such judgment or decree, in the manner in which real property is levied upon and sold under execution, and subject to the same rules of redemption.

Historical: Rev. St. 1887, Sec. 1122.
4 Ter. Ses. (1867) 64, Sec. 3.

Same: Purchaser to Give Bond.

Sec. 1044. In all cases where the person to whom any such right or franchise was originally granted, was required to execute any bond or undertaking for the performance of any act or acts connected with said franchise, the party or parties purchasing at sheriff's sale must, before the confirmation of said sale by the proper court, execute a similar bond or undertaking, to be approved and filed in like manner as the original.

Historical: Rev. St. 1887, Sec. 1123.
4 Ter. Ses. (1867) 64, Sec. 4.

Assignability: Under this section, together with Revised Statutes, Sec-

tions 1125 and 1126, a ferry franchise is the subject of voluntary assignment. *Evans v. Kroutinger* (1903) 9 Ida. 153; 72 Pac. 882.

Keeping Without License: Penalty.

Sec. 1045. Any and all persons who keep, or attempt to keep, any toll road, bridge or ferry, and receive toll or pay therefor, without first obtaining a license for the same, must pay a fine of not less than fifty dollars for each offense, for the benefit of the common school fund, and for which complaint may be made by any aggrieved party, before any justice of the peace having jurisdiction.

Historical: Rev. St. 1887, Sec. 1128.
2 Ter. Ses. (1864) 440, Sec. 10.

Effect of License: A license to conduct a ferry protects the licensee from

liability to fine under this section even though he has no franchise. *Evans v. Kroutinger* (1903) 9 Ida. 153; 72 Pac. 882.

Revocation of License.

Sec. 1046. If any person licensed to keep a toll road, bridge, or ferry, fails to pay the taxes assessed thereon when due, or does not

provide or keep the same in good and complete repair, necessary for the safe travel and conveyance of persons and property, or abandons the same for the space of sixty days, the board of commissioners of the proper county, on complaint being made in writing, must summon the person licensed to keep such road, trail, bridge, or ferry, to show cause why such license should not be revoked, and the board must decide thereon according to the testimony adduced, which decision is subject to appeal as in other cases, to the District Court.

Historical: Rev. St. 1887, Sec. 1129.
See 2 Ter. Ses. (1864) 440, Sec. 13.

Cross Reference: Appeals to District Court: Secs. 1950-1953.

Exclusiveness of Right.

Sec. 1047. The right to construct and keep a toll road, bridge or ferry granted by the board of commissioners under the provisions of this title, may be made exclusive for one mile on each side of the line of the road, or of the landing of the bridge or ferry.

Historical: Rev. St. 1887, Sec. 1130.
See 3 Ter. Ses. (1866) 179, Sec. 2.

Cited: Evans v. Kroutingier (1903)
9 Ida. 153; 72 Pac. 882.

Liability for Damages: Lien for Tolls.

Sec. 1048. Any damages sustained by any person or persons in crossing any toll bridge or ferry, or in traveling upon any toll trail or toll road, upon which toll gates are established or tolls collected, caused by the neglect of the owners thereof, either by an unskillful management or failure to keep such bridge, ferry, toll road or toll train in good repair for the accommodation of the traveling public, are a lien upon said bridge, ferry, or toll road, to be enforced by action; and the tolls allowed by law to be collected upon any toll road, ferry or bridge, are a lien upon any property passing over the same, to be collected as other liens; but no damages shall accrue at any time when tolls are not charged.

Historical: Rev. St. 1887, Sec. 1131.
3 Ter. Ses. (1866) 181, Sec. 1.

CHAPTER 6.

GOOD ROAD DISTRICTS.

Section

- 1049. Constitution of district.
- 1050. Petition for organization: Hearing.
- 1051. Appeal.
- 1052. District election: Good road commissioners.
- 1053. Oath, bond and organization of board of commissioners.
- 1054. Issuance of bonds.
- 1055. Account of road district moneys.

Section

- 1056. Tax levy.
- 1057. Compensation of members of board.
- 1058. Limitations on boundaries: Effect of organization.
- 1059. Contracts for construction of roads.
- 1060. Bond of contractor.

Constitution of District.

Sec. 1049. Any portion of a county desiring to be created or set off as a special good road district for the purpose of improving any or all of the public roads therein, within the provisions of this chapter, which contains twenty-five or more resident taxpayers, may be organ-

ized into a special good road district for such purpose, and when so organized, such district and the board of good road commissioners hereinafter provided for, shall have and possess the powers of a body corporate to issue bonds for the building and repairing of any or all of the public roads within its district. Such road district, when duly organized according to the provisions of this chapter, shall be known as "Good Road District No., of the County of, State of Idaho," and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall continue in existence until such time as said roads have been improved and the bonds issued therefor have been paid off in full, and shall adopt and use a seal. The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such road district, have the power, and it shall be their duty, to manage and conduct the business affairs of the district, pertaining to said roads, make and execute all necessary contracts, employ and appoint such officers and employees as may be required, and to prescribe the duties of such officers and employees, and to perform such other acts as are hereinafter provided or that may hereafter be provided by law.

Historical: Laws 1905, 237, Sec. 1.

Petition for Organization: Hearing.

Sec. 1050. For the purpose of the formation of such road listrict, a petition shall be presented to the board of county commissioners of the county in which said proposed district is located, which petition shall set forth the object of the creation of such district, designating the boundaries thereof, and set forth therein the assessed values of all the assessable property embraced within said district, and shall be signed by a majority of all the freeholders residing within said proposed district; and shall contain a brief description of the proposed building, repairing or other improvement proposed for said road or roads; the route over which the same is to be constructed, also the kind of material proposed to be used for the construction or repair of said road or roads. Such petition shall be presented at a regular meeting of the board of county commissioners of said county, and shall be published for at least two successive issues of some weekly newspaper printed and published in said county, together with a notice stating the time of the meeting, at which the petition shall be presented. Copies of such petition and notice shall be posted in at least three places in such proposed district, at least two weeks before such petition is to be presented to the county commissioners. When such petition is presented for a hearing, the board of county commissioners shall hear the same, or may adjourn such hearing from time to time, not exceeding thirty days in all, and any person or corporation may apply before said board if county commissioners and make objection to the establishment of said district or the proposed boundary lines thereof, and upon a final hearing said board of county commissioners shall make such change in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land contained within the boundaries of such proposed road dis-

trict; also the number of freeholders residing within the boundaries of said proposal district: *Provided*, That no change shall be made by the said board of county commissioners in said boundary lines so as to include any territory outside of the boundaries described in said petition: *Provided, further*, That any person or persons owning lands within the proposed boundaries, and who did not sign said petition, or any person, persons or corporation owning lands not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein, setting forth in said petition the reason therefor, and if it shall appear to the board of county commissioners that said territory should be included within the boundaries of such road district, they may extend such boundaries so as to include such territory: *Provided, however*, That no person, persons or corporation, not owning lands inclosed within said proposed boundaries, shall have the right to file such petition unless asking therein to have their own lands included within the proposed boundaries.

Historical: Laws 1905, 237, Sec. 2.

Appeal.

Sec. 1051. Any person within the boundaries of any good road district who may feel aggrieved or injured by the decision of the board of county commissioners, may appeal therefrom to the District Court of said county, in the usual and statutory manner in which such appeals are taken.

Historical: Laws 1905, 237, Sec. 3.

Cross Reference: Appeal from

county commissioners: Secs. 1950-1953.

District Election: Good Road Commissioners.

Sec. 1052. Upon the entry of the findings of the final hearing of said petition as set forth in Section 1050, said board of county commissioners of said county, if they find said proposed good road district will be conducive to the public welfare and convenience of all the people residing within the boundaries of said good road district shall give notice of an election to be held in said proposed road district for the purpose of determining whether the same shall be organized under the provisions of this chapter as a good road district of the State of Idaho; and for the further purpose of choosing at such election three commissioners, residents of said district, who shall be known and designated as "Good Road Commissioners for Road District No.," proposed to be organized, which three commissioners shall, upon their election, be the road district authorities of said road district; and such notice shall state the time and place where such election shall be held, and that the polls shall be open from twelve o'clock noon till five o'clock p. m. Such notice shall also describe the boundaries as established by the board of county commissioners on its final hearing of said petition, and shall state the name and number of such proposed good road district; and approximately the number of acres of land in said district to be benefited by such improvement; and shall also state the nature of the proposed improvement, whether it shall be turnpike, macadam or wood, or all or any

two of them. Such notice shall be published for at least two weeks prior to such election, in a weekly newspaper, printed and published within the county in which such district is located, and copies of such notice shall be posted in at least three places in said proposed district at least two weeks before the date of such election.

Only resident freeholders residing within the boundaries of such good road district shall be allowed to vote at any good road election. Should a majority of the votes cast at such election be in favor of the formation of said good road district, the same shall be considered as formed. In that case the three persons having received the highest number of votes for the office of good road commissioner of said district shall be declared elected to such office. Such commissioners so elected shall hold office for one year from the second Tuesday in December next following the date of said election, or until their successors are elected and qualified. Thereafter said commissioners shall hold office for the term of two years, and shall be elected biennially at an election to be held on the second Tuesday in December. The said elections, notices thereof and the manner of conducting the same, shall be in all respects like those now required for the election of school directors in independent school districts.

Historical: Laws 1905, 237, Sec. 4. "Section 1050" inserted in line 2 for "the last preceding section." The provision for findings is in Section 1050 and not in the "last preceding section," which relates only to appeals. The clause "only resident free holders

* * * shall be allowed to vote," etc., is transposed to what seemed a more appropriate phrase.

Cross Reference: Election of school directors in independent school districts: Sec. 654.

Oath, Bond and Organization of Board of Commissioners.

Sec. 1053. The board of good road commissioners shall, within ten days after their election, take and subscribe to an oath that they will support the constitution of the State of Idaho and the laws thereof, and that they will discharge the duties of their office to the best of their ability. The said commissioners shall each give a bond with not less than two sureties, in the sum of five hundred dollars, for the faithful performance of their duties; the said board of commissioners shall meet within ten days after their election and organize, by electing one of their number as chairman, one as secretary, and one as treasurer. Any vacancy occurring in the board of good road commissioners shall be filled by appointment by the remaining members of the board.

Historical: Laws 1905, 237, first part of Section 5 and Section 10. The

provision for filling vacancies is Section 10.

Issuance of Bonds.

Sec. 1054. Said board of good road commissioners shall have authority, by and with the consent of a two-thirds majority of the qualified electors of their respective districts, voting at any election held for the purpose of issuing bonds, to issue bonds not exceeding twenty-five per cent of the assessed value of the real property within such good road district. The proceeds from the sale of such bonds shall be used exclusively for the purpose of the building or improvement of the roads, and for the purchase of material, land, and machinery necessary for such improvements within their respective

districts. Such bonds issued by said commissioners shall not be sold at a less price than their face value, and shall bear interest at not to exceed six per cent per annum, which interest shall be due and payable on the first day of February of each year. No bonds shall be sold for a longer period than twenty years and may be redeemed in ten years from the date of issue.

The proceeds arising from the sale of said bonds shall be paid to the county treasurer of the county in which such good road district is situated; and any and all moneys belonging to said district shall by him be paid out only upon orders issued by the board of commissioners of any good road district as provided by this chapter.

At any election held within any road district organized under the provisions of this chapter for the purpose of authorizing the commissioners to issue bonds, the form of ballots shall be written or printed with the words "Bonds yes," "Bonds no". The person voting shall strike out the words "Bonds yes" or "Bonds no", as the case may be, and the words not stricken out shall indicate the wish of the voter. The returns of any election held within any good road district must be duly certified to by the judges and clerk of such election, and by them sealed and by the clerk of such election board delivered to the county auditor of the county in which such road district is situated, and the county auditor shall file such election return in his office as a permanent record.

Whenever, under the provisions of this chapter, the board of good road commissioners shall be authorized to issue bonds, said bonds shall have interest coupons attached, and shall be numbered consecutively, commencing with number one. The coupons shall bear the same number as the bonds bear to which the coupons are attached. Said bonds shall be for sums of not less than one hundred dollars nor more than five hundred dollars each. Whenever payment of interest on said bonds shall be made, the coupons corresponding to such payment shall be detached and given as a receipt therefor.

All bonds with their coupons attached, issued by any road district provided for in this chapter, shall be signed by the chairman and secretary of the board of commissioners of the district issuing said bonds, and the official seal of the district shall be affixed by the secretary of said board to all bonds issued by his district.

Historical: Laws 1905, 237, last part of section 5, Section 6, last half Section 9.

Account of Road District Moneys.

Sec. 1055. It shall be the duty of the county treasurer of the county in which any good road district is created, to keep a separate account of all moneys belonging to any and all of the good road districts, within his county; he shall keep a record and the number of all bonds issued by the good road district of the county; he also shall keep an accurate account of all moneys received and paid out by him.

Historical: Laws 1905, 237, Sec. 7.

Tax Levy.

Sec. 1056. It shall be the duty of the board of good road commissioners to provide for a tax levy each year, within their respective

districts, upon all the assessable property within their respective districts, sufficient to pay the interest on bonds outstanding against such district, also to pay any other indebtedness incurred during the year in which such levy is made; and also to provide for a permanent sinking fund of not less than five per cent of the bonded indebtedness of their district. They shall, on or before the first day of September of each year, make an estimate of the amount of money necessary to be collected, together with the amount of the assessable property within their district, together with the names of the owners thereof, and shall deliver said list to the county auditor of their respective counties. The county auditor shall apportion such assessment to each property owner within said district according to the values as returned by the county assessor of the county in which such district is located, and all taxes so levied shall become a valid lien against such property, and shall be collected by the county assessor as other taxes are collected.

Historical: Laws 1905, 237, Sec. 8, and first half of Section 9.

Compensation of Members of Board.

Sec. 1057. The board of good road commissioners herein mentioned shall receive, as compensation for their services, not to exceed the sum of two and one-half dollars each per day for the time actually employed in the performance of their several duties. Said amounts shall be paid from the good road district funds, upon the presentation of itemized vouchers, subscribed and sworn to in the same manner as bills against the county.

Historical: Laws 1905, 237, Sec. 11.

Limitation on Boundaries: Effect of Organization.

Sec. 1058. No portion of any good road district shall include within its boundaries any portion of any road included within any incorporated city or town. Nor shall it include a portion of two counties.

When any such good road district is organized under the provisions of this chapter, it shall supersede all other road districts or parts of districts within the limits of such good road district, and the good road commissioners shall have the power to levy and apply all road taxes collected within their respective districts.

It shall be the duty of the board of county commissioners to apportion to such good road districts all road and poll taxes collected or levied within their districts.

Historical: Laws 1905, 237, Sec. 12.

Contracts for Construction of Roads.

Sec. 1059. When the board of good road commissioners shall direct improvement of any roads within their district, whether turnpike, macadam or wood, or any two of the above mentioned, they shall make and enter into a contract for the improvement or construction of such road or roads, either for the entire work in one contract, or parts thereof in separate and specified sections, as to them may seem best: *Provided*, That no work shall be done under any such contract

until a certified copy thereof shall have been filed with the secretary of the board of good road commissioners. All such contracts shall be made by the board of good road commissioners in the name of their road district upon such terms of payment as shall be fixed by them, and shall be made with the lowest and best bidder, on sealed proposals, after notice thereof has been published for not less than three weeks in at least one newspaper published within the county, and in the town nearest to such road district; they shall also post copies of such notice in at least three conspicuous places in the good road district in which such work is to be performed, which notice shall contain a description of the kind and amount of work to be done, and the kind of material to be used.

Historical: Laws 1905, 237, Sec. 13.

Bond of Contractor.

Sec. 1060. Each contractor shall be required to give a bond to the district, with sureties to be approved by the commissioners of the road district by which such contract is let, for the faithful performance of the contract, and the commissioners shall have power to institute suit in the name of the district to enforce all such contracts. The commissioners shall not pay more than seventy-five per cent of the contract price on any contract until such time as the contract has been completed and by them accepted.

Historical: Laws 1905, 237, Sec. 14.

CHAPTER 7.

STATE HIGHWAY COMMISSION.

Section

- 1061. Constitution of commission.
- 1062. Duties of commission.
- 1063. Officers.
- 1064. Report of commission.
- 1065. Presentment and allowance of claims.
- 1066. Notice to county commissioners to repair roads.
- 1067. Same: Affidavit of complaint.
- 1068. Failure to repair: Establishment of toll road.
- 1069. Same: Order for establishment: Bids.
- 1070. Undertaking to accompany bid.

Section

- 1071. Award of contract.
- 1072. Same: Bond of contractor.
- 1073. Same: Specifications.
- 1074. Same: Cancellation, modification and forfeiture.
- 1075. Proceedings on abandonment or forfeiture.
- 1076. Toll: Where collected.
- 1077. Rates of toll: Avoidance of payment.
- 1078. Persons and property subject to toll.
- 1079. Same: Exemptions.

Constitution of Commission.

Sec. 1061. The Governor, State Engineer and State Mining Inspector are hereby constituted a Board of State Highway Commissioners, which shall be known as the "State Highway Commission."

Historical: Laws 1907, 466, Sec. 1.

Duties of Commission.

Sec. 1062. The State Highway Commission shall have control and supervision, as provided herein, of such roads, bridges and trails as have been constructed in whole or in part at the expense of the State

though direct appropriation therefor, in order that the same may be kept in proper repair, and not suffered through neglect to fall into a condition in which they may be unsafe for travel, or in any way unavailable for use as public highways. The word "roads", wherever used in this chapter, shall be construed as including also all such bridges and trails.

Historical: Laws 1907, 466, Sec. 2.

Cross Reference: Acts providing for the construction of roads by the State

are found in the table of special laws affixed to Section 17 of these Codes.

Officers.

Sec. 1063. The Governor shall be ex-officio chairman of the commission, and the commission at its first meeting shall elect one of its members as secretary, who shall keep minutes of all the meetings and transactions of the commission, and an accurate account of its disbursements, and have the custody of its records and files. The Treasurer of the State of Idaho shall be the treasurer of the commission, and liable upon his official bond for the faithful performance of his duties as such treasurer. The members of the commission shall serve without compensation as such members, but shall be allowed their actual and necessary expenses incurred in performing their official duties as such commissioners.

Historical: Laws 1907, 466, Sec. 3.

Report of Commission.

Sec. 1064. The commission shall make an itemized report and statement on the first days of June and January of each year to the State Auditor, of all their disbursements, contracts and transactions. Said commission may make such rules and regulations for the transaction of its business as it may deem expedient, subject to the provisions of this chapter.

Historical: Laws 1907, 466, Sec. 4.

Presentment and Allowance of Claims.

Sec. 1065. All claims against the commission requiring the payment of money shall be itemized and verified under oath, whereupon they shall be audited by the commission, and if allowed or any part thereof, shall be certified up to the State Auditor by the chairman and secretary of the commission, which shall authorize the Auditor to draw his warrant therefor, on the claim being approved by the Board of Examiners: *Provided*, That before any claim shall be so certified it must have been authorized by a vote of a majority of the commission at a regular meeting thereof.

Historical: Laws 1907, 466, Sec. 5.
The phrase "on the claim being approved by the Board of Examiners"

is inserted to make the section conform to Const. Art. 4, Sec. 18.

Notice to County Commissioners to Repair Roads.

Sec. 1066. Whenever a showing shall be made, as herein provided, that any road or trail or portion thereof, subject to the provisions of this chapter, is in actual and serious need of repair, the commission shall cause the same to be inspected by some competent person, who shall report thereon to the commission in writing. The secretary

of the commission shall thereupon, by registered letter, notify the board of county commissioners in the county or counties where such repairs are needed, specifying the place or places on said road where such repairs are required, and the nature of the work necessary to put the same in proper condition. Such notice shall state that if such county does not make such repairs, or cause them to be made, at the expiration of a certain time, the commission will proceed in relation thereto under the provisions of this chapter. Such notice shall be for not less than thirty days, and the time therein granted may be extended, on account of inclemency of the weather or any other good cause, at the discretion of the commission. At the expiration of the time stated in such notice or extension thereof, the commission shall ascertain by the written report of some competent person, verified under oath, as to whether such repairs have been properly made, and if it appears to the commission that such repairs have not been made, or that they have been improperly or insufficiently made, said commission shall thereupon have power to proceed under the provisions of this chapter.

Historical: Laws 1907, 466, Sec. 6.

Same: Affidavit of Complaint.

Sec. 1067. The showing required by the preceding section shall be in the form of an affidavit by not less than three credible persons, which must state in detail the place or places where such repairs are needed, the actual condition of such road at such place or places, the nature of the work required to put the same in proper condition, and that such statement is made after personal inspection by each affiant.

Historical: Laws 1907, 466, Sec. 7.

Failure to Repair: Establishment of Toll Road.

Sec. 1068. If, after the showing made, proceedings taken and notice given as herein provided, any county shall neglect, fail or refuse to repair such road or roads, or any portion thereof and put the same in proper condition for use as public highways, the commission may thereupon make an order, reciting the facts and stating that it becomes expedient to lease such road or portion thereof for a toll road, in order that the same may be properly maintained. Such order shall specify the location and termini of such road or portion thereof, and shall direct the secretary of the commission to cause such order to be published in some newspaper of general circulation in the county in which such road or portion thereof is located, for a period of not less than four weeks, and in like manner to give notice therewith, that sealed bids will be received by the secretary at a certain place until a particular hour of a certain day thereafter, and not more than ten days after the expiration of the publication of such order and notice for the leasing of such road or portion thereof.

Historical: Laws 1907, 466, Sec. 8.

Same: Order for Establishment: Bids.

Sec. 1069. The order of the commission must specify the number of gates to be placed on the road, and the period for which said road

or portion thereof is to be let, which shall not exceed five years. The bid must specify the rates of toll, according to the classification herein, which the bidder is willing to accept as full compensation for putting and maintaining the road in the condition specified in the order.

Historical: Laws 1907, 466, Sec. 9.

Undertaking to Accompany Bid.

Sec. 1070. No bid shall be considered unless accompanied by an undertaking, executed by two or more sureties, in the sum of two thousand dollars, to be void upon the condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping such road, and give the bond to secure the performance thereof as herein provided.

Historical: Laws 1907, 466, Sec. 10.

Award of Contract.

Sec. 1071. Upon opening the bids, the lease shall be awarded to the lowest and best bidder, but the commission may reject any and all bids when there appears sufficient cause therefor, and in such case they may again advertise for bids, as herein provided.

Historical: Laws 1907, 466, Sec. 11.

Same: Bond of Contractor.

Sec. 1072. The contract for the lease must be subscribed by the lessee, approved by the commission, and filed with the secretary thereof. At the time of filing such contract the commission shall require a proper and adequate bond or undertaking from the lessee, with two or more sufficient sureties to be void upon the condition that the lessee will faithfully perform his contract in relation to such road, and comply with the provisions of this chapter.

Historical: Laws 1907, 466, Sec. 12.

Same: Specifications.

Sec. 1073. Such contract of lease must specify that such road shall be kept clear of timber or other obstructions to travel, that it shall be maintained in good order with a track of a certain width, that the streams or other waters on the line thereof shall be kept properly bridged or ferries established thereon, if necessary. If turnouts are to be maintained, grades established, materials supplied, bridges built or other construction work done, the contract shall specify the same in detail, and in general such contract shall require that the lessee maintain such road at all times in reasonably good condition for ordinary usage as a public highway.

Historical: Laws 1907, 466, Sec. 13.

Same: Cancellation, Modification and Forfeiture.

Sec. 1074. The commission shall have authority, upon the application of the lessee, to cancel or modify the lease upon such terms as may be equitable and just, and whenever the lessee fails, neglects or refuses to comply with the provisions of his lease or of this chapter, the commission may request the Attorney General of the State to

bring action in the proper court in the name of the State to have such lease declared forfeited, or it may request the county attorney of any county through which such road passes to bring such action in the District Court for that county, and when so requested in writing it shall be the duty of the Attorney General or the county attorney, as the case may be, to bring such action forthwith.

Historical: Laws 1907, 466, Sec. 14.

Proceedings on Abandonment or Forfeiture.

Sec. 1075. When any such lease is abandoned or declared forfeited, the commission may again notify the county or counties in which such road or portion thereof is located to maintain the same, as hereinbefore provided, or it may at once advertise for bids to lease such road again, at its discretion.

Historical: Laws 1907, 466, Sec. 15.

Toll: Where Collected.

Sec. 1076. No toll shall be collected for travel on such road except at a gate, nor unless a sign board be posted at such gate in full view of the travel on the road, with the rates of toll plainly printed or painted thereon. The lease must specify the number of gates that may be placed on the road, and the location thereof, and thereafter the number of such gates must not be increased under such lease, but the commission, upon the application of the lessee, may at any time, for good reasons shown, authorize the lessee to change the location of such gates or any of them. No toll gate, toll house or other building must be put up within ten rods of the front of any dwelling house, barn or outhouse, without written consent of the owner thereof.

Historical: Laws 1907, 466, Sec. 16.

Rates of Toll: Avoidance of Payment.

Sec. 1077. The rates of toll that the lessee may collect and receive must be specified in the lease, and none other must be charged; and any person who passes through a gate on such road without paying the toll legally chargeable thereat, or when traveling on such road shall be liable to the lessee for three times the amount of such toll; and any lessee of such road, who, by himself or his agents or servants, collects or receives of any person illegal toll for traveling on such road, shall be liable to such person for three times the amount of such toll.

Historical: Laws 1907, 466, Sec. 17.

Persons and Property Subject to Toll.

Sec. 1078. Tolls shall be chargeable by the lessee upon the following items, or classes of persons or property, only:

1. Sheep and hogs;
2. Loose horses, mules, asses and cattle;
3. Man and riding animals and pack animals loaded;
4. Vehicles loaded or unloaded and drawn by one or more animals;
5. Automobiles and bicycles.

Historical: Laws 1907, 466, Sec. 18.

Same: Exemptions.

Sec. 1079. The following persons, and none other, shall be exempt from paying toll on such roads:

1. Persons going to or from any funeral, and all funeral processions;
2. Troops in actual service of the State, or of the United States.
3. Persons going to or from the court house of any county in obedience to a subpoena in a criminal action;
4. Persons living within a mile of any gate by the most usually traveled road may pass it at one-half toll, when not engaged in the transportation of others or the property of others;
5. Farmers living on their farms within one mile of any gate by the most usually traveled road may pass free when going to or from their work on such farms;
6. School children attending school within three miles of their places of residence.

Historical: Laws 1907, 466, Sec. 19.

TITLE 8

POLICE OF THE STATE

Preservation of Public Health.

Chapter

1. State board of health.
2. County board of health.

Chapter

3. Dairy, food and oil inspection.

The Livestock Industry.

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| 4. Inspection and suppression of diseases among livestock . | 7. Liabilities of stock ranchers. |
| 5. Two mile limit law. | 8. Marks and brands. |
| 6. Dogs killing sheep or goats. | 9. Leases of livestock. |

Inclosures, Trespass of Animals and Estrays.

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| 10. Fences. | 13. Estrays. |
| 11. Inclosures of reservoirs and dumps. | 14. Herd districts. |
| 12. Animals running at large and trespassing. | |

The Horticultural and Bee Industries.

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| 15. Horticultural inspection. | 16. Bee inspection. |
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The Regulation of Professions.

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| 17. The practice of medicine. | 21. The practice of pharmacy. |
| 18. The practice of dentistry. | 22. Licensed surveyors. |
| 19. The practice of osteopathy. | 23. Abstractors of titles. |
| 20. The practice of optometry. | |

Protection and Regulation of Labor.

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| 24. Bureau of immigration, labor and statistics. | 27. Protection of mechanics. |
| 25. Labor commission and arbitration. | 28. Union labor and employment of aliens. |
| 26. Employment bureaus. | 29. Day's work and child labor. |

Particular Industries.

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| 30. The printing trade. | 32. Inspection of lumber. |
| 31. Warehousemen. | |

Licensed Occupations.

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| 33. The liquor traffic. | 34. Peddlers. |
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Miscellaneous Provisions.

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| 35. Money of account and interest. | 38. Fire escapes on buildings. |
| 36. Weights and measures. | 39. Hunting on inclosed lands. |
| 37. Unclaimed property. | 40. Explosives. |

CHAPTER 1.

STATE BOARD OF HEALTH.

Article	Article
1. Constitution and duties of State Board of Health.	3. Prevention and suppression of disease.
2. Compilation of vital statistics.	

ARTICLE 1.

CONSTITUTION AND DUTIES OF THE STATE BOARD OF HEALTH.

Section	Section
1080. Establishment of board.	1084 Salary and expenses of secretary and board.
1081. Meetings and procedure.	1085. Powers and duties of board.
1082. Secretary: Election and qualifications.	1086. Rules to prevent disease: Penalty for infraction.
1083. Same: Term of office and duties.	

Establishment of Board.

Sec. 1080. A board is hereby established which shall be known under the name and style of the Idaho State Board of Health; it shall consist of five members as follows: Two members who shall be experienced and legally licensed physicians of different parts of the State to be appointed by the Governor, and a secretary, as provided in Section 1082. These three, together with the Attorney General of the State and the State Engineer, who shall be ex-officio members, shall constitute the State Board of Health. The persons so appointed shall hold office for four years: *Provided*, That those first appointed shall be so classed by the Governor that the term of one shall expire on the second Monday of January in every second year; thereafter the Governor shall biennially appoint one member in the place of the one whose term shall so expire, who shall hold office for four years, and all vacancies occurring otherwise shall be filled by the Governor: *Provided, further*, That the members of said board, as at present constituted, shall continue to hold office until the expiration of their respective terms.

Historical: Laws 1907, 182, Sec. 1. The second proviso is added to pre-	serve the present constitution of the board.
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Meetings and Proceedure.

Sec. 1081. The board shall meet annually at Boise on the first Tuesday of October, and at such other times and places as they may deem expedient. A majority shall constitute a quorum for the transaction of business. They shall choose annually one of their members to be their president and may adopt rules and by-laws subject to the provisions of this chapter. They shall have authority to send their secretary or a committee of the board to any part of the State, when deemed necessary to investigate the cause of any epidemic or any special or unusual disease or mortality.

Historical: Laws 1907, 182, Sec. 2.

Secretary: Election and Qualification.

Sec. 1082. At their first meeting, or as soon as a competent and

suitable person can be secured, the board shall elect a secretary, who shall be a physician of experience and legally licensed to practice medicine and surgery in this State, and who shall, by virtue of such election, become a member of the board and its executive officer. The board may elect one of their own members secretary, in which case the Governor shall appoint another member to complete the full number of the board.

Historical: Laws 1907, 182, Sec. 3.

Same: Term of Office and Duties.

Sec. 1083. The secretary shall hold his office so long as he shall faithfully discharge the duties thereof, but may be removed for just cause at a regular meeting of the board, a majority of the members voting therefor. He shall keep his office at Boise and shall perform the duties prescribed by this chapter or required by the board. He shall keep a record of the transactions of the board, shall have the custody of all the books, papers, documents and other property belonging to the board which may be deposited in his office; shall, so far as practicable, communicate with other boards of health within this State; shall keep and file all reports received from such local boards of health and all correspondence of the office pertaining to the business of the board. He shall prepare blank forms of returns and such instructions as may be necessary, and forward them to the clerks of the several local boards of health and county recorders throughout the State. He shall collect information concerning vital statistics, knowledge respecting diseases, and all useful information on the subject of hygiene, and through an annual report and otherwise as the board may direct shall disseminate such information among the people.

Historical: Laws 1907, 182, Sec. 4.

Salary and Expenses of Secretary and Board.

Sec. 1084. The secretary shall receive an annual salary which shall be fixed by the State Board of Health, and which in no case shall exceed eighteen hundred dollars, which shall be paid him in the same manner that the salaries of other State officers are paid. The expense account of the secretary's office, other than his salary, shall be certified to the State Board of Examiners by the president of the State Board of Health, and shall thereupon be audited and paid as other claims against the State. The board shall annually certify the amount of the expense account of the secretary's office, other than his salary, and on presentation of said certificate, the State Auditor shall draw his warrant on the State Treasurer for the amount. The other members of the board, except the Attorney General and the State Engineer, shall receive a per diem compensation of not to exceed ten dollars for their services; and they and all other members of the board shall be allowed their actual traveling expenses and other necessary expenses while employed on the business of the board, to be certified and paid in like manner as the expense account of the secretary's office.

Historical: Laws 1907, 182, Sec. 5.

Powers and Duties of Board.

Sec. 1085. The State Board of Health shall have a general supervision of all matters relating to the preservation of the life and health of the people of the State. They shall especially study the vital statistics of the State, and endeavor to make profitable and intelligent use of the collected records of sickness and mortality among the people; they shall carefully study the influence of the climate upon diseases and health in different localities in the State, for the benefit of the citizens thereof, as well as for the information of that large class of people who contemplate making this State their temporary or permanent home; they shall make sanitary investigations and inquiries respecting the causes of disease, and especially epidemics; the causes of mortality and the effects of localities, employments, conditions, ingesta, habits and circumstances on the health of the people. They shall, when required or when they deem it best, advise officers of the government or other State boards in regard to the location, drainage, water supply, disposal of excreta, heating and ventilation of any public institution or building, and they shall, either as a whole board or through a committee of the board or other persons appointed by them for that purpose, visit and report on the sanitary condition of all State institutions as often as conditions may require, but the State Hospital for the Insane, the Penitentiary and the Soldiers' Home, shall be visited and reported on at least once a year, said report to become a part of the records of the State Board of Health, and a copy of said report shall be filed in the office of the Governor and of the Secretary of State, and also mailed to each member of the several boards controlling the management, and the officers in charge of these institutions.

Historical: Laws 1907, 182, Sec. 6.

Cross Reference: Reports of officers
and boards: Sec. 279.

Rules to Prevent Disease: Penalty for Infraction.

Sec. 1086. Whenever the State Board of Health shall have cause to believe that there is any danger of cholera, small-pox or other contagious or infectious disease invading this State or country, it shall be the duty of said board to take such action, and adopt and enforce such rules and regulations, as may be necessary to prevent the introduction of such infectious or contagious disease within this State, and any person or persons or corporations refusing or neglecting to obey such rules and regulations shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than three hundred dollars, or imprisoned in the county jail for not less than thirty nor more than ninety days, or be punished by both such fine and imprisonment, in the discretion of the court, for every such offense. And it shall be the duty of all police officers, sheriffs and constables to enforce such regulations, subject to the authority of the State health officers. Whenever necessary, the State Board of Health may call public conferences of local health officers, or may, by a vote of a majority of its members, send a delegate to any conference of local State or national health officers.

Historical: Laws 1907, 182, Sec. 7.
 "Be punished by" inserted to complete the sense.

ARTICLE 2.

COMPILATION OF VITAL STATISTICS.

Section	Section
1087. Reports to board.	1092. Fees of recorder.
1088. Registers of marriages, births and deaths.	1093. Failure to perform duties: Punishment.
1089. Same: Certified copy to be filed.	1094. Secretary is registrar of vital statistics.
1090. Record of registers.	
1091. Same: Abstracts to be certified to secretary.	

Reports to Board.

Sec. 1087. In order to afford the State Board of Health better advantages for obtaining knowledge important to be incorporated with that collected through special investigations and from other sources, it shall be the duty of all officers of the State, the physicians of all mining or other incorporated companies, the superintendent or other person in charge of any public, private or parochial hospital, and the president or agent of any company chartered, organized or transacting business under the laws of this State, so far as practicable, to furnish to the State Board of Health any information bearing upon the public health which may be requested by said board, for the purpose of enabling it better to perform the duties of collecting and distributing useful knowledge on this subject.

Historical: Laws 1907, 182, Sec. 8.
 "The State Board of Health" inserted for "this board" in line 1.

Registers of Marriages, Births and Deaths.

Sec. 1088. All persons who perform the marriage ceremony must keep a register of the time and place of each marriage so celebrated, the residence, the names in full, the place of birth, the age of each party, and whether either party has ever been before married, and if so whether divorced. All physicians and professional midwives must keep a register of the date and place of each birth at which they assist professionally, the name in full, sex, race, color, and the number of the child, whether living or still-born, and the names, color, occupation, birthplace, age and residence of parents, the maiden name of the mother and whether the child was born in or out of wedlock. Physicians who attend diseased persons in their last sickness, clergymen who officiate at funerals, coroners who hold inquests, sextons and undertakers who bury deceased persons, must each keep a register of the date and place of each death, the name, age, sex, color, conjugal condition, birthplace, cause of death, immediate and contributory, duration of illness, and the names, residences and color of parents.

Historical: Laws 1907, 182, Secs. 9, 10, 11.

Same: Certified Copy to Be Filed.

Sec. 1089. All persons registering marriages, births or deaths,

must quarterly file with the county recorder a certified copy of their register: *Provided*,... That, if at a birth, no physician or midwife attend, then it shall become the duty of the father of the child, householder or owner of the premises, or the head of the hospital or institution in which the birth occurred, in the order named, to make and file the certificate, within thirty days after the birth.

Historical: Laws 1907, 182, Sec. 12.

Record of Registers.

Sec. 1090. The county recorder must provide and keep separate registers to be known as the "Register of Marriages," the "Register of Births," and the "Register of Deaths," in which the marriages, births and deaths certified to him must be entered and numbered in the order in which they are reported to him; and must be properly indexed. There must be stated in each register, in separate columns, properly headed, the various facts contained in the certificates, and the name and professional, official or clerical position of the person making the report. The recorder must carefully examine such report, and register the same marriage, birth or death but once, although it may be reported by different persons.

Historical: Laws 1907, 182, Sec. 13.

Same: Abstracts to Be Certified to Secretary.

Sec. 1091. The county recorder must, every three months, transmit to the secretary of the State Board of Health, at Boise, Idaho, a certified abstract of the registers of marriages, births and deaths, prepared in the manner prescribed in the instructions of the secretary, and upon blanks to be furnished by him for that purpose.

Historical: Laws 1907, 182, Sec. 14.

Fees of Recorder.

Sec. 1092. The county recorders shall perform the duties required of them by this chapter without compensation other than their salary: *Provided*, That for a certified copy of the record of a marriage, birth or death, they shall receive a fee of one dollar, to be paid by the person to whom such copy is furnished, and reported by them as in the case of other fees.

Historical: Laws 1907, 182, Sec. 15.

Failure to Perform Duties: Punishment.

Sec. 1093. Any person on whom a duty is imposed by the five preceding sections, who fails, neglects or refuses to perform the same as herein required, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not exceeding fifty dollars, or be imprisoned in the county jail not exceeding ninety days, or be punished by both such fine and imprisonment.

Historical: Laws 1907, 182, Sec. 16.
"Be punished by" inserted to complete the sense.

Secretary Is Registrar of Vital Statistics.

Sec. 1094. The Secretary of the State Board of Health shall be

the State registrar of vital statistics of Idaho. He shall, under the direction of the State Board of Health, prepare the necessary methods, books and forms for the accurate registration of marriages, births and deaths, as provided in Sections 1088, 1089 and 1091, and must have printed as many copies as the said secretary shall deem necessary, and shall forward the same, from time to time, in such numbers as shall be deemed necessary by the said secretary, to the county recorders of the several counties, who must carefully keep and distribute the same to the persons in the county who are required to keep the registers and make the reports provided in this chapter.

Historical: Laws 1907, 182, Sec. 17.

ARTICLE 3.

PREVENTION AND SUPPRESSION OF DISEASE.

Section	Section
1095. Local boards of health.	1103. Disinfection of clothing and bedding.
1096. Meetings and powers of boards.	1104. Exclusion of exposed persons from schools.
1097. Suppression of nuisances.	1105. Hospital for infectious diseases.
1098. Duties of health officers.	1106. Cremation and burial of bodies.
1099. Physicians to report certain diseases.	1107. Quarantine of cities and counties.
1100. Quarantine of infected houses.	1108. Report of sore eyes in infants.
1101. Exposing infected persons or articles.	
1102. Disinfection of houses.	

Notes: Prevention of infectious disease in schools: Secs. 663-666. Crimes against public health and safety, in general: Secs. 6908-6935.

Local Boards of Health.

Sec. 1095. The board of county commissioners, together with the county physician, shall constitute the county board of health. The physician of said county board shall be the secretary and executive officer of the board. The county board of health shall be empowered to make its own local rules and regulations not inconsistent with the laws, rules and regulations of the State Board of Health. Any locality in which there is urgent need of a local board may organize such local board of health by selecting at least one physician, who shall be the executive officer of such local board, and two other persons who may or may not be physicians. Such local board of health shall act under authority and direction of the State Board of Health. This section shall not conflict with Chapter 2 of this title.

Historical: Laws 1907, 182, Sec. 19. "Chapter 2 of this title" substituted for "Sections 1150 to 1154, inclusive, of the Revised Statutes of Idaho of 1887." In view of the fact that those sections are expressly continued in

force, they are reproduced in the next chapter without regard to any conflict which may exist between them and this and the following sections of this chapter.

Meetings and Powers of Boards.

Sec. 1096. The local board of health of each county and municipality shall meet quarterly in the months of January, April, July and October, and as much oftener as they may deem necessary, and may adopt all needful rules and regulations for the government of their respective bodies, subject to the provisions of this chapter. They shall establish the salaries of their respective health officers, and

shall regulate all fees and charges in connection with their own regulations; they shall act in conjunction with the State Board of Health and report quarterly to said board such facts in reference to the sanitary condition of their respective counties or municipalities as they may deem important or necessary, or as required by the State Board of Health: *Provided*, That if there is a regular salaried county physician, it shall be his duty to attend to all quarantined patients who are unable to pay, without extra charge, and in no case shall the fees allowed to physicians for their services as local health officers exceed the regular fees of physicians for similar services, and no extra charge shall be made nor allowed in any case for admitting any patient or releasing him from quarantine.

Historical: Laws 1907, 182, Sec. 20.

Suppression of Nuisances.

Sec. 1097. Such local board of health shall take cognizance of all unhealthy nuisances within the limits of their sanitary jurisdiction; and every person or corporation refusing or neglecting, after due notice, to comply with the requirements of said board in this respect shall be liable to a penalty of not exceeding fifty dollars or imprisonment in the county jail for not more than sixty days, or to both such fine and imprisonment. All questions arising between local boards as to jurisdiction or their relative duty in the abatement of any particular nuisance shall be referred to the State Board of Health for settlement.

Historical: Laws 1907, 182, Sec. 21.

Duties of Health Officers.

Sec. 1098. It shall be the duty of every county and municipal health officer, immediately after his appointment, to transmit to the secretary of the State Board of Health his full name and post office address. He shall keep accurate record of the proceedings of the local board of which he is the secretary, as well as his own official acts, and furnish a report thereof quarterly to the secretary of the State Board of Health, together with such other information in regard to the sanitary condition of his jurisdiction as he may deem interesting or valuable for publication in the annual report of the State Board of Health. He shall receive for his services such reasonable compensation as his board may allow, to be paid out of the county or municipal treasury, and for every failure or neglect of said health officer to perform any of the duties prescribed in this chapter, he shall be guilty of a misdemeanor.

Historical: Laws 1907, 182, Sec. 22.

Physicians to Report Certain Diseases.

Sec. 1099. Every physician or other person called to attend any person who is suffering from small-pox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever or typhoid fever, or any other disease dangerous to the public health or required by the State Board of Health to be reported, shall report the same to the health officers within whose jurisdiction such person is found, giving in such report the name, age, sex and color of the patient, and

the house or place in which such person may be found; and in the case of small-pox, cholera, plague, yellow fever, typhoid fever, diphtheria, membranous croup, or scarlet fever, the attending physician shall at once declare a temporary quarantine, and shall prohibit entrance to or exit from such house; such temporary quarantine to remain in effect only until such time as the proper health officer can be notified and can act in the matter. In like manner it shall be the duty of the head of the family, and of the owner or agent of the owner of the building in which a person resides who has any of the diseases herein named or provided against, or in which are the remains of a person having died of any such disease, immediately after becoming aware of the fact, to give notice thereof to the health officer. When complaint is made or a reasonable belief exists that an infectious or contagious disease prevails in any house or any other locality which has not been reported as hereinbefore required, the board shall cause such house or locality to be inspected by its health officer, and on discovery that such infectious or contagious disease prevails in any house or any other locality which has not been reported as hereinbefore required, the board shall cause such house or locality to be inspected by its health officer, and on discovering that such infectious or contagious disease exists, the board may, as it deems best, send such person to a quarantine hospital or other place provided for such persons, or may restrain them or other persons exposed within said house from intercourse with other persons, and prohibit ingress and egress to or from such premises.

Historical: Laws 1907, 182, Sec. 23.
The phrase "of the head of the family"

is transposed to make the second sentence clearer.

Quarantine of Infected Houses.

Sec. 1100. It shall be the duty of the local board of health, when a case of small-pox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever or any other dangerous, contagious or infectious disease is reported within its jurisdiction, to at once cause to be placed, in a conspicuous position on the house wherein any of the aforesaid diseases occur, a quarantine card having printed on it in large letters the name of the disease within, and to prohibit entrance to or exit from such house without written permission from the board of health. No person quarantined by a board of health on account of having a contagious disease, or for having been exposed thereto, shall leave such quarantined house or place without the written permission of the board of health. Every physician attending a person affected with any of the aforementioned diseases, shall use such precautionary measures to prevent the spread of the disease as may be required by the board of health. No person shall remove, mar, deface or destroy such quarantine card, which shall remain in place until after the patient has been removed from such house, or has recovered and is no longer capable of communicating the disease, and the said house and the contents thereof have been properly purified and disinfected under the directions of the board of health; and where other inmates of said house have been exposed to, and are liable to become ill of, any of said diseases, for a period thereafter, counting from the completing of disinfection, as fol-

lows, to-wit, in diphtheria and membranous croup, fourteen days; in small-pox, seventeen days; in scarlet fever, ten days; in cholera or yellow fever, seven days; in typhus fever, twenty-one days. In cases of measles, chicken-pox and whooping cough, or either of them, the board of health may require the same report of cases, and may enforce the same quarantine and other preventive measures, as are provided for in this chapter in case of scarlet fever. The board of health may employ as many persons as it deems necessary to execute its orders and properly guard any house or place containing any person or persons affected with any of the diseases named herein, or who have been exposed thereto, and such persons shall be sworn in as quarantine guards, shall have police powers, and may use all necessary means to enforce the provisions of this chapter for the prevention of contagious or infectious diseases, or the orders of any local board of health made in pursuance thereof.

Historical: Laws 1907, 182, Sec. 24.

Exposing Infected Persons or Articles.

Sec. 1101. Any person who, while suffering from small-pox, cholera, plague, yellow fever, diphtheria, membranous croup or scarlet fever, wilfully or unlawfully exposes himself in any street, shop, inn, theatre or other public place or public conveyance, or being in charge of any person so suffering, so exposes such sufferer, or gives, lends, sells, transmits or exposes, without previous disinfection under the direction of the board of health, any bedding, clothing, rags or other things which have been exposed to infection from any such diseases, or who knowingly lets for hire any house, room or part of the house in which any person has been suffering from any such disease, prior to such house, room or part of the house having been disinfected by the board of health or under its direction, shall be liable to a penalty of not exceeding three hundred dollars, or to imprisonment not exceeding three months, or to both, in the discretion of the court.

Historical: Laws 1907, 182, Sec. 25.

Disinfection of Houses.

Sec. 1102. When the health authorities of any county or municipality is of opinion, on the certificate of a qualified medical practitioner, that the cleansing and disinfection of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious diseases, it shall be the duty of such authority to give notice in writing to the owner or occupant of such house or part thereof, requiring him or her to cleanse and disinfect such house, or part thereof, and articles, within a time specified in such notice; and if the person to whom such notice is so given fails to comply therewith, he or she shall be guilty of a misdemeanor, and shall be fined not less than five dollars, and the health authority shall cause such house, or part thereof, and articles, to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupant in default as other fines and forfeitures are recoverable: *Provided*, That where the owner or occupant of any such house or part thereof is, from poverty or otherwise, unable,

in the opinion of such health authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupant, cleanse and disinfect such house or part thereof, and articles, and the municipality or county in which said house is situated shall defray the expenses thereof.

Historical: Laws 1907, 182, Sec. 26.

Disinfection of Clothing and Bedding.

Sec. 1103. Any local health authority may direct the disinfection or destruction of any bedding, clothing or other articles which have been exposed to infection from any dangerous infectious disorder: *Provided*, That when any person sustains any damages by reason of the exercise of any of the provisions of this section in relation to any matter as to which he is not himself in default, reasonable compensation shall be made by the municipal or county authorities to such person.

Historical: Laws 1907, 182, Sec. 27.

Exclusion of Exposed Persons From Schools.

Sec. 1104. No person residing in or occupying any house in which there is a person suffering from small-pox, cholera, plague, typhus fever, diphtheria, membranous croup, chicken pox, measles, mumps, whooping cough, or scarlet fever, shall be permitted to attend any public, private or parochial school or college, or Sunday school, or any other public gathering, until the quarantine provided for in such diseases in Section 1100 has been removed by the board of health. All school principals, Sunday school superintendents or other persons in charge of such schools, are hereby required to exclude any and all such persons until such time as they may present a written permit of the local board of health to attend or re-enter such schools.

Historical: Laws 1907, 182, Sec. 28.

Hospital for Infectious Diseases.

Sec. 1105. The municipal or county authorities may, when necessary, provide a hospital for infectious diseases for the use of the inhabitants of their respective municipality or county, or two or more local authorities may combine in providing a common hospital for contagious diseases or a place of detention for persons having contagious diseases. Any expense incurred by the authorities of any municipality or county in maintaining in a hospital, or in a temporary place for the reception of the sick, a patient who is not a pauper, shall be deemed to be a debt due from such patient to the authorities aforesaid, and may be recovered from him at any time within twelve months after the discharge from such hospital or place of reception, or from his estate in the event of his death.

Historical: Laws 1907, 182, Secs. 29 and 30.

Cremation and Burial of Bodies.

Sec. 1106. The bodies of persons who have died of small-pox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever or other dangerous, contagious or infectious disease, shall be buried or cremated within twenty-four hours after

death, unless written permission to the contrary is granted by the board of health, and no public or church funeral shall be held in connection with the burial of a person who has died of any of the above named diseases, and the body of any such person shall not be taken into any church, chapel or other public place, and only the adult members of the family and such other persons as are actually necessary, shall be present at the burial or cremation of the body.

Historical: Laws 1907, 182, Sec. 31.
"Unless written permission to the contrary is granted by the board of health" inserted for "except by written permission of the board of health."

The latter phrase is obscure and it is thought that the substitution explains, without changing, the expressed intent of the section.

Quarantine of Cities and Counties.

Sec. 1107. Whenever small-pox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever or other dangerous, contagious or infectious diseases, show a tendency to become epidemic, and the local health authorities neglect or refuse to properly isolate and quarantine such diseases, the State Board of Health, or its executive officers, may quarantine any city or county or part thereof in which any of these diseases may show a tendency to become epidemic, and the expense of such quarantine shall be charged against and paid by the county so quarantined, except in a case where a city or a part thereof is quarantined, when said expense shall be paid by such city. And in all such cases the local health authorities may cause all public schools, churches and theatres to be closed, and all meetings or public assemblies to be prohibited, during the prevalence of such epidemic.

Historical: Laws 1907, 182, Sec. 32.

Report of Sore Eyes in Infants.

Sec. 1108. Should one or both eyes of an infant become inflamed or swollen or reddened, or should any pus or secretion form in the eyes or upon the edge of the lid, at any time within two weeks after birth, it shall be the duty of any midwife, nurse or other person having charge of such infant, to report, within six hours after discovery of such inflammation, redness or formation of pus or secretion, to the local health officers, or to some legally qualified practitioner of medicine in the district in which such case shall occur, the fact that such inflammation, swelling or redness or accumulation in the eye exists. Any failure to comply with the provisions of this section shall be punished by a fine of not to exceed one hundred dollars, or imprisonment not to exceed ninety days, or by both fine and imprisonment in the discretion of the court.

Historical: Laws 1907, 182, Sec. 33.

CHAPTER 2.

COUNTY BOARD OF HEALTH.

Section	Section
1109. Constitution of board.	1112. Same: Infected districts.
1110. Rules to prevent spread of disease.	1113. Expenses: How paid.
1111. Quarantine of infected premises.	

Note: This chapter should be read in connection with the last article of the preceding chapter, by which additional duties are imposed on county boards of health, and by which this chapter is expressly continued in force. See note to Section 1095.

Constitution of Board.

Sec. 1109. The board of county commissioners of each county must, biennially at their regular meeting in January, appoint one intelligent person residing in the county, who must be an experienced and skillful physician, and the person so appointed, who shall be known as the county physician, together with such board of county commissioners, shall constitute a county board of health for the term of two years, or until their successors be appointed and qualified. Any vacancy in such board of health caused by death or resignation of such county physician (who is the executive officer of such board) or by his refusal to act as a member thereof, must be filled by appointment by the commissioners. If any county has a physician employed to care for the indigent sick of such county, such physician must be one appointed by the board of commissioners, as a member of the board of health, and every practicing physician in said county is hereby declared to be an advisory member of said board of health.

Historical: Rev. St. 1887, Sec. 1150; amended Laws 1903, 364, Sec. 1.

Organization of the Board: The organization of the county board of health is completed by the appointment of a physician to act with the commissioners on such board. *Corker v Pence* (1906) 12 Ida. 152; 85 Pac. 388.

Employment of Physician: The individual action of the chairman of the board of county commissioners in employing a physician to look after small-pox patients does not create a charge against the county. *Castle v. Bannock Co.* (1901) 8 Ida. 124; 67 Pac. 35.

Rules to Prevent Spread of Diseases.

Sec. 1110. Said county board of health must make and establish for their county, or any district or place therein, such sanitary rules and regulations as they may deem necessary and proper to prevent the outbreak and spread of dangerous, contagious and infectious diseases.

Historical: Rev. St. 1887, Sec. 1151; amended Laws 1903, 364, Sec. 1.

Cited: *Castle v. Bannock Co.* (1901) 8 Ida. 124; 67 Pac. 35.

Duration of Rules: The board of health is a continuing body and its

rules and regulations continue until supplanted by new ones, notwithstanding a change in the personnel of the board. *Corker v. Pence* (1906) 12 Ida. 152; 85 Pac. 388.

Quarantine of Infected Premises.

Sec. 1111. It is the duty of every practicing physician to report promptly to the county physician of the county in which he resides, all or any dangerous disease of an infectious or contagious nature under treatment by him, and he is also hereby empowered and required to at once establish a strict quarantine against such person or premises by such means as shall seem to him to be sufficient, subject to revision by the county board of health, and said board must at once take the necessary precautions to prevent the spread of such dangerous or infectious disease. Any person violating the provisions of this chapter, or the regulations of said attending physician, or of the county board of health, is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 1152;
amended Laws 1903, 364, Sec. 1.

Cited: Castle v. Bannock Co. (1901)
8 Ida. 124; 67 Pac. 35.

Same: Infected Districts.

Sec. 1112. The board of health of any county may declare quarantine therein or in any particular district or place therein, against the introduction of dangerous, contagious or infectious disease prevailing in any State, county or place, and of any or all persons and things liable to spread such dangerous, contagious and infectious disease. The said county board has authority and power to enforce such quarantine until the same is raised by themselves, and may confine such afflicted person or persons liable to spread such dangerous, contagious or infectious disease to the house or premises in which he or she resides, or, if deemed advisable, to a place to be provided by them for that purpose.

Historical: Rev. St. 1887, Sec. 1153;
amended Laws 1903, 364, Sec. 1.

Cited: Castle v. Bannock Co. (1901)
8 Ida. 124; 67 Pac. 35.

Expenses: How Paid.

Sec. 1113. All necessary expense incurred by the said county board of health in enforcing the provisions of this chapter must be paid for out of the general treasury from the current expense fund of the county, as other bills chargeable against said current expense fund are audited and paid.

Historical: Rev. St. 1887, Sec. 1154;
amended Laws 1903, 264, Sec. 1.

Cited: Castle v. Bannock Co. (1901)
8 Ida. 124; 67 Pac. 35.

CHAPTER 3.

DAIRY, FOOD AND OIL INSPECTION.

Article	Article
1. Board of dairy food and oil commissioners.	2. Standards of food and oil.
	3. Miscellaneous provisions.

Note: This chapter contains some sections, similar in modified form, to sections of the Washington and Oregon laws. See. Bal. An. Code, Wash. (Sup.) Secs. 2848, et seq. Laws Oregon, 1905, 348. A prior act on the subject covered by this chapter is found in Laws 1903, 95.

ARTICLE 1.

BOARD OF DAIRY, FOOD AND OIL COMMISSIONERS.

Section	Section
1114. Constitution of board.	1119. Duties of commissioner.
1115. Compensation and expenses.	1120. Salary of commissioner.
1116. Biennial report.	1121. Duty of attorney general and prosecuting attorneys.
1117. Auditing expenses.	1122. State chemist.
1118. Horticultural inspector to be commissioner.	1123. Board may issue bulletins.

Constitution of Said Board.

Sec. 1114. The Secretary of State, the professor of agriculture and superintendent of institutes, and one other person appointed by the Governor of the State, shall hereby constitute a State Board of Dairy, Food and Oil Commissioners, who, in conjunction with the State Board of Horticultural Inspection, shall carry out the provisions

of this chapter, and shall have an equal voice with the State Board of Horticultural Inspection in selecting the Commissioner and secretary.

Historical: Laws 1905, 54, Sec. 1.

Compensation and Expenses.

Sec. 1115. The State Board of Dairy, Food and Oil Commissioners shall receive no compensation for their services as such board, but shall be allowed necessary traveling expenses, and the Commissioner and secretary shall be allowed traveling, printing and other expenses not exceeding \$1,200 annually. All accounts for expenditures incurred or made pursuant to the provisions of this chapter, shall be approved and certified by the said State Board of Dairy, Food and Oil Commissioners before presentation to the State Auditor.

Historical: Laws 1905, 54, Sec. 2.

Biennial Report.

Sec. 1116. The State Board of Dairy, Food and Oil Commissioners shall biennially, on December 1st, report to the Governor of this State a full account of their official actions under this chapter; also the operations and results of this or any other laws pertaining to the dairy industry, foods, drink and illuminating oils in the State; a full account of all expenses and disbursements of the board; as full and complete statistics as it is in their power to collect pertaining to the manufacture, import and export of the dairy products within the State for the biennial term, and shall make suggestions as to the need of further legislation on this subject.

Historical: Laws 1905, 54, Sec. 3.

Cross Reference: Reports of officers and boards: Sec. 279.

Auditing Expenses.

Sec. 1117. All expenses incurred under the provisions of this chapter shall be audited as required by law upon bills being presented, properly certified by the Board of Dairy Food and Oil Commissioners, and the State Auditor shall, from time to time, draw warrants upon the State Treasurer for the amounts thus audited.

Historical: Laws 1905, 54, Sec. 4.

Horticultural Inspector to Be Commissioner.

Sec. 1118. The State Horticultural Inspector shall also be the Dairy, Food and Oil Commissioner.

Historical: Laws 1905, 54, Sec. 5.

Cross Reference: Commissioner is

ex-officio inspector and sealer of weights and measures: Sec. 1541.

Duties of Commissioner.

Sec. 1119. It shall be the duty of the Dairy, Food and Oil Commissioner to enforce all laws that now exist or that may be hereafter enacted in this State regarding the protection, manufacture or sale of dairy products, foods, drink, and illuminating oils, and to inspect any article of milk, butter, cheese, foods, drink, illuminating oils, or imitations thereof, made or offered for sale within the State, which he may suspect or have reason to believe to be impure, unhealthful, adul-

terated, misbranded or counterfeit, or not complying with this chapter; and to prosecute or cause to be prosecuted any person or persons, firm or firms, corporation or corporations, engaged in the manufacture or sale of any adulterated, misbranded or counterfeit dairy products, food, drink or illuminating oil, contrary to law.

Historical: Laws 1905, 54, Sec. 6.

Salary of Commissioner.

Sec. 1120. The Dairy, Food and Oil Commissioner and Horticultural Inspector shall receive a salary of eighteen hundred dollars per annum, one-half of which shall be paid from the funds provided under this chapter and one-half from the funds provided for horticultural inspection, and the secretary of the Board of Dairy, Food and Oil Commissioners shall be the secretary of the State Board of Horticultural Inspection and his salary shall not exceed seven hundred dollars per annum, one-half of which shall be paid from the funds provided under this chapter and one-half from the funds provided for horticultural inspection.

Historical: Laws 1905, 54, Sec. 7.

Duty of Attorney General and Prosecuting Attorneys.

Sec. 1121. It shall be the duty of the Attorney General or the prosecuting attorney in any county of the State, when called upon by the Dairy, Food and Oil Commissioner, to render any legal assistance in their power to execute the laws, and to prosecute cases arising under the provisions of this chapter.

Historical: Laws 1905, 54, Sec. 8.

State Chemist.

Sec. 1122. The State Board of Dairy, Food and Oil Commissioners shall have power to appoint a State Chemist, who shall receive a salary of two thousand dollars per annum, which shall be paid from any funds in the Treasury of the State of Idaho, not otherwise appropriated, and who shall hold office at the will of the board.

Historical: Laws 1905, 54, Sec. 30;
amended Laws 1907, 337, Sec. 1.

Board May Issue Bulletins.

Sec. 1123. The State Board of Dairy, Food and Oil Commissioners shall have authority to issue bulletins as often as deemed necessary, showing a list of analyses made by the State Chemist or other chemist; also any other information they may have in regard to the subject of this chapter.

Historical: Laws 1905, 54, Sec. 31.

ARTICLE 2.

STANDARDS OF FOOD AND OIL.

Section	Section
1124. Sales of impure milk and cream.	1127. Test of cream cheese.
1125. Test of impure milk.	1128. Sale of cheese containing foreign substances unlawful.
1126. Skimmed milk must be marked.	1129. Sale of imitation butter prohibited.

Section

- 1130. Sales of process butter.
- 1131. Percentage of fat for butter.
- 1132. Weight of butter.
- 1133. Stencil brand for cheese and butter.
- 1134. Baking powders: Ingredients to be indicated.
- 1135. Sale of drugged liquor prohibited.
- 1136. Cider vinegar: Percentage of solids and acids.
- 1137. Same: Other vinegars.

Section

- 1138. Vinegar barrels to be marked.
- 1139. Certain substances prohibited in vinegar.
- 1140. Fire test required of oil, etc.
- 1141. Sale of adulterated or misbranded products prohibited.
- 1142. Food defined.
- 1143. Adulteration defined.
- 1144. Misbranding defined.
- 1145. Board may establish standards.

Sales of Impure Milk and Cream.

Sec. 1124. It shall be unlawful for any person to sell or offer for sale or furnish or deliver to any creamery, cheese factory, corporation, person or persons whatsoever, as pure, wholesome and unskimmed, any impure or unwholesome or skimmed milk. No person, persons or corporation shall sell or offer for sale any cream taken from impure or diseased milk, or any cream that contains less than eighteen per centum of pure butter fat.

Historical: Laws 1905, 54, Secs. 9, 16.

Test of Impure Milk.

Sec. 1125. In all prosecutions or other proceedings under this or any other law of the State relating to the sale or furnishing of milk, if it shall be proven that the milk sold or offered for sale, or furnished or delivered, or had in possession with intent to sell or offer for sale, or to furnish or deliver, as aforesaid, as pure, wholesome or unskimmed milk, contains less than three per centum of pure butter fat, or less than eight per centum of milk solids other than fat, when subjected to chemical analysis or other satisfactory tests, or that it, or any part of it, was drawn from cows within fifteen days before, or four days after, parturition, or from cows having any disease or ulcers or other running sores, then and in either case the said milk shall be held and adjudged to be unmerchantable, adulterated, impure or unwholesome, as the case may be. Also, if it shall appear that the cows kept for the production of milk or cream, for market or sale or exchange, or for manufacturing their milk into articles of food, are kept in a crowded, unsanitary or unhealthy condition, or in unsanitary stables or enclosures, or are being fed on distillery waste or other substances in a state of putrefaction or rottenness, or upon any substance of an unhealthful nature, the milk or cream from the same is hereby declared impure and unwholesome. Any milk or cream that has been exposed to or contaminated by emanation, discharges or exhalation from persons or animals, or has been subject to unclean or unsanitary conditions, or to which has been added any borax, boracic acid, salicylic acid, or any other substance which prevents or tends to prevent the normal bacterial action of milk or cream, is hereby declared to be impure and unwholesome.

Historical: Laws 1905, 54, Sec. 10.

Skimmed Milk Must Be Marked.

Sec. 1126. No person, persons or corporation shall sell or expose for sale, in any store or place of business or in any wagon or other vehicle used in the transportation or sale of milk, milk from which cream has been removed, or milk commonly called "skimmed milk", without first marking the can or package containing said milk with the words "skimmed milk" in large plain black letters, each letter being at least one inch high and one-half inch wide, said words to be on the side not below the middle of said can or package, where they can be easily seen.

Historical: Laws 1905, 54, Sec. 17.

Test of Cream Cheese.

Sec. 1127. Cream cheese under this chapter shall contain not less than thirty per centum of pure butter fat and shall have been manufactured from pure and wholesome milk, from which no portion of the butter fat shall have been removed by skimming or by other process, and in the manufacture of which neither butter nor any substance for butter, or any animal or vegetable fats or oils, have been used, or any fat which has been extracted from milk in any form and returned for the purpose of filling said cheese. All cheese containing less than thirty per centum of pure butter fat shall be marked "skimmed cheese" in full face capital letters not less than one inch high with such ink as is not easily removed by moisture. The manufacture or sale of any cheese containing less than fifteen per centum of pure butter fat, or so-called "filled cheese" is hereby prohibited: *Provided*, That nothing in this section shall be construed to apply to Edam, Brickstein, Pineapple, Limburger or Swiss cheese, or hand-made cheese, or any other fancy cheese: *Provided, further*, That cheese not made in this State, but which shall be sold or offered for sale in this State, shall be so stamped as to indicate its true character: and *Provided, further*, That no cheese shall be stamped "full cream" which does not in every particular comply with the requirements of "full cream" cheese, as hereinbefore set forth.

Historical: Laws 1905, 54, Sec. 11.

Sale of Cheese Containing Foreign Substances Unlawful.

Sec. 1128. It shall be unlawful for any person to sell or offer for sale or exchange, or have in his possession for sale, any cheese containing any substance except salt, rennet and harmless vegetable coloring matter, other than that produced from pure milk or cream, or both, or from pure skimmed or pure half-skimmed milk.

Historical: Laws 1905, 54, Sec. 14.

Sale of Imitation Butter Prohibited.

Sec. 1129. No person, by himself, his agents, or his servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his or their possession with intent to sell or serve to patrons, guests, boarders, or inmates of any hotel, eating house, restaurant, public conveyance or boarding house or public or private hospital, asylum, school or eleemosynary or penal institution, any article, product, or compound made wholly or partly out of any fat, or oil, or oleaginous

substance or compound thereof, not produced directly and wholly at the time of manufacture from unadulterated milk or cream from the same, with or without harmless vegetable coloring matter, which shall be in imitation of yellow butter produced from pure, unadulterated milk or cream from the same: *Provided*, That nothing in this chapter shall be construed to prohibit the manufacture and sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient which causes it to resemble butter, or the use of the same by patrons, guests, boarders, or inmates of any hotel, eating house, restaurant, public conveyance, or boarding house, when signs are displayed in a conspicuous place that may be easily read from any part of the room.

Historical: Laws 1905, 54, Sec. 13.

Cross Reference: Penalty for fraud-

ulent sale of imitation butter: Sec. 6917.

Sales of Process Butter.

Sec. 1130. No person, firm or corporation shall manufacture, sell or offer for sale or have in his possession with the intent to sell, butter known as "process butter" unless the package in which the butter is sold has marked on the side of it the words "renovated butter" in capital letters one inch high and one-half inch wide, with ink which is not easily removed: *Provided*, That it shall be unlawful for any retailer to sell said butter unless a card is displayed on the package from which he is selling butter, with the following words printed thereon, so that it may be easily read by the purchaser, to-wit: "renovated butter"; or if it is sold in packages on which a wrapper is used, the words "renovated butter" shall be plainly printed on each and every wrapper: *Provided, further*, That all process butter shipped from other States shall be subject to the same regulations as are provided in this section.

Historical: Laws 1905, 54, Sec. 15.

Percentage of Fat for Butter.

Sec. 1131. All dairy or creamery butter shall contain not less than eighty-two and five-tenths per centum butter fat.

Historical: Laws 1905, 54, Sec. 19.

Weight of Butter.

Sec. 1132. Each package of butter offered or exposed for sale shall have stamped upon the wrapper or package, the actual number of ounces contained in said package. Each square or roll of butter kept, exposed or offered for sale in the State of Idaho, which is represented to contain one pound in weight, shall contain full sixteen ounces; and each square or roll of butter kept or offered for sale in the State of Idaho, which shall be represented to contain two pounds in weight, shall contain full thirty-two ounces.

Historical: Laws 1905, 54, Sec. 20.

Stencil Brand for Cheese and Butter.

Sec. 1133. The Dairy, Food and Oil Commissioner is hereby authorized and directed to procure and issue to the butter and cheese

manufacturers of the State, and under any regulations as to the custody and use thereof as he may prescribe, at the expense of the party requiring the same not exceeding one dollar, a uniform stencil brand, bearing the name of the manufacturer and place where manufactured, and the words "Idaho State Full Cream Cheese," or "Idaho State Creamery Butter," or "Idaho State Dairy Butter." Every brand issued shall be used on the outside of each cheese and package containing the same, and shall be used on the wrapper of each package of butter, and also on the outside of every package used by him, and shall contain a different number for each separate manufactory. The Commissioner shall keep a book in which shall be registered the name, location and number of each manufacturer using the said brand. It shall be unlawful to use or permit such brand to be used on any other than Idaho full cream cheese, or Idaho creamery butter, or Idaho dairy butter, or packages containing the same, unless such cheese or butter has been manufactured within the State of Idaho from pure milk or cream by the person, persons or firm using said brand: *Provided*, That all butter known as "tub butter," that has been packed or stored in tubs or firkins, which is pressed or printed into what is known as bricks, pats or rolls, shall have in addition the words "tub butter" in one-half inch Roman letters stamped or pressed upon it, or, if wrapped, the wrapper shall be marked in such manner. All butter sold or offered for sale within the State shall have the name of the manufacturer and place of manufacture stamped upon the label.

Historical: Laws 1905, 54, Sec. 18.

Baking Powders: Ingredients to Be Indicated.

Sec. 1134. Every person making, manufacturing or selling, or offering or exposing for sale, any baking powders, or any mixture or compound intended for use as a baking powder, shall securely affix, or cause to be securely affixed, to every box, can, or package containing such baking powder or like mixture or compound, on a white or light colored label, upon the outside and face of which is distinctly printed with black ink, in legible type no smaller than "brevier heavy Gothic caps," the name and residence of the manufacturer and the words "This baking powder is composed of the following ingredients and none other"; and immediately after said words shall be printed, in the English language, upon said white or light colored label, in the color, style and manner above specified, the true and correct name of each and all ingredients contained in or constituting a component part of such baking powder, or mixture or compound intended for use as a baking powder, using the names by which each ingredient is commonly known in trade.

Historical: Laws 1905, 54, Sec. 23.

Sale of Drugged Liquor Prohibited.

Sec. 1135. No person shall, within this State, by himself, his servant or agent, or as agent of any other person or corporation, manufacture, brew, distill, have or offer for sale, or sell any spirituous or fermented or malt liquors containing any drug, substance or ingredient not a normal constituent in spirituous, fermented or malt

liquors, or which may be deleterious or detrimental to health when such liquors are used as a beverage. The following drugs, substances or ingredients shall be deemed to be not normal in spirituous, fermented or malt liquors, and shall be deemed to be deleterious or detrimental to health when contained in such liquors, to-wit: *Cocculus indicus*, chloride of sodium, copperas, opium, cayenne pepper, picric acide, Indian hemp, strychnine, arsenic, tobacco, darnel seed, extract of logwood, salts of zinc, copper or lead, alum, methyl alcohol and its derivatives, amyl alcohol, and any extract or compound of any of the above drugs, substances or ingredients.

Historical: Laws 1905, 54, Sec. 24.
"Or as agent" inserted before "of any other person," etc. The meaning of

the section was obscure, but the interpolation supplies what was probably intended.

Cider Vinegar: Percentage of Solids and Acids.

Sec. 1136. No person, persons, firm, corporation or corporations shall manufacture, sell or offer for sale as apple cider vinegar, any vinegar not made exclusively from pure apple juice; nor any other fruit vinegar not made exclusively from fruit juices. Apple cider vinegar or fruit vinegar shall contain at least one and three-fourths per centum of cider vinegar solids, upon full evaporation over boiling water, and shall contain at least four per centum by weight of acetic acid.

Historical: Laws 1905, 54, Sec. 25.

Same: Other Vinegars.

Sec. 1137. All vinegars shall be made wholly from the substance or substances from which they purport to be, or are represented to be made, and shall contain not less than four per centum by weight of acetic acid.

Historical: Laws 1905, 54, Sec. 26.

Vinegar Barrels to Be Marked.

Sec. 1138. Each barrel, cask or keg containing vinegar sold, offered or exposed for sale, in this State, shall be plainly branded or stenciled with bold-faced black letters and figures, at least one inch in length, on the head of said barrel, cask or keg, giving the name of the kind of vinegar contained therein, the name of the substance or substances from which it is made, and the name and location of the manufacturer manufacturing the same.

Historical: Laws 1905, 54, Sec. 27.

Certain Substances Prohibited in Vinegar.

Sec. 1139. Every person who manufactures for sale, offers or exposes for sale, or sells, any vinegar containing any preparation of lead, copper, sulphuric acid, or other mineral acids, or any acid made from the distillation of wood, or any ingredient injurious to health, shall be deemed guilty of a misdemeanor.

Historical: Laws 1905, 54, Sec. 28.

Fire Test Required of Oil, Etc.

Sec. 1140. No person, persons, firm, corporation or corporations, shall hereafter import or bring into the State, either personally or

by any clerk, servant or agent, or shall sell, offer for sale, or have in possession for sale, any illuminating oil adulterated in any manner, other than benzole, benzine, gasoline, naphtha and distillates, which on the application of a well lighted taper or similar flame will take fire and burn at a temperature below that of one hundred and twenty degrees of Fahrenheit's thermometer. The instrument in which the degrees of fire test shall be made shall be the G. Tagliabue oil pyrometer or some other instrument equally accurate. It is hereby declared to be the true intent and meaning of this chapter that the terms oil, illuminating oils, oils used for illuminating purposes, and all similar words, terms and expressions used herein, shall be held to mean any mineral or petroleum oil, or any fluid or substance which is the product of such oil or petroleum, or in which such oil or fluid or substance obtained shall be a constituent part by whatsoever name or title such oil, fluid, or other substance may be known or called. Benzole, benzine, gasoline, naphtha, and distillates, must be sold under their true names and grades, respectively, and such names and grades must be impressed or otherwise plainly marked upon the barrel, can or vessel in which the same is sold, offered, or exposed for sale, respectively, or upon a label conspicuously and securely fastened thereto; and every barrel, can or vessel of kerosene or coal oil that is offered or exposed for sale, shall be in like manner plainly marked or labeled with the words "kerosene" or "coal oil," and with the degree, Fahrenheit, of fire test below which the same will not burn.

Historical: Laws 1905, 54, Sec. 32.

Sale of Adulterated or Misbranded Products Prohibited.

Sec. 1141. No person or persons, firm or corporation, shall within this State, manufacture for sale, have in his or their possession with intent to sell, offer or expose for sale, or sell, any article of food, drink or illuminating oil, which is adulterated or misbranded within the meaning of this chapter.

Historical: Laws 1905, 54, Sec. 33.

Food Defined.

Sec. 1142. The term "food" as used herein, shall include all articles used for food, drink, confectionery, or condiment by man, whether simple, mixed, or compound, and all substances and ingredients used in preparation of the same.

Historical: Laws 1905, 54, Sec. 34.

Adulteration Defined.

Sec. 1143. For the purposes of this chapter an article shall be deemed to be adulterated:

In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow, or other mineral substances, or poisonous colors or flavors, or other ingredients deleterious or detrimental to health.

In the case of food: 1. If any substance or substances has or have been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

2. If any substance or substances has or have been substituted wholly or in part for the article;

3. If any valuable constituent of the article has been wholly or in part abstracted;

4. If it contains any added poisonous or other ingredient which may render such article injurious to the health of the person consuming it;

5. If it consists in whole or in part of filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter;

6. If it does not conform to the standard of strength and purity authorized by this chapter.

Historical: Laws 1905, 54, Sec. 35.

Cross Reference: Penalty for adul-

terating food, drugs and liquors: Sec. 6918.

Misbranding Defined.

Sec. 1144. For the purpose of this chapter an article of food shall be deemed to be misbranded;

1. If it be offered for sale under the distinctive name of another article: *Provided*, That the term "distinctive name" shall not be construed as applying to any article sold or offered for sale under a name that has come into general use to indicate the class or kind of the article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced;

2. If it be mixed, colored, powdered, or stained in a manner whereby damage is concealed, so that such product, when sold or offered for sale, shall deceive or tend to deceive the purchaser;

3. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or is an imitation, either in package or label, of another substance of a previously established name, or which has been trade-marked or patented;

4. If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular, or if the same is falsely branded as to the State, Territory or place in which it is manufactured or produced.

Provided, however, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

1. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, or ingredients of articles of food, under their own distinctive names, and not included in definition first of misbranded articles of food in this section;

2. In the case of articles distinctly and conspicuously labeled, so as to plainly indicate that they are mixtures, compounds, combinations, imitations, or blends: *Provided*, That the same shall be distinctly and conspicuously labeled so as to show the character and constituents thereof: *And Provided, further*, That nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas, except in so far

as the provisions of this chapter may require to secure freedom from adulteration or imitation: *Provided, further,* That no dealer shall be convicted under the provisions of this chapter when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party from whom he purchases such articles to the effect that the same is not adulterated or misbranded within the meaning of this chapter, designating it: And *provided, further,* That said guarantor or guarantors reside in the State of Idaho. Said guaranty to afford protection shall contain the name and address of the party or parties making the sale of such article to such dealer, and said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this chapter.

Historical: Laws 1905, 54, Sec. 36.
Cross Reference: Penalty for false labeling of drugs: Sec. 6916.

Board May Establish Standards.

Sec. 1145. The State Board of Dairy, Food and Oil Commissioners shall have authority from time to time to establish standards of strength and purity not designated in this chapter, said standards to be in harmony with the standards authorized by the United States Department of Agriculture, or by the United States Pharmacopoeia, as the case may be.

Historical: Laws 1905, 54, Sec. 29.

ARTICLE 3.

MISCELLANEOUS PROVISIONS.

Section	Section
1146. Reports by dairies, creameries and cheese factories.	1150. Possession evidence of guilt.
1147. Clerks to aid Commissioner.	1151. Certificate of chemist prima facie evidence.
1148. Samples for analysis to be furnished.	1152. Subpoena for State Chemist.
1149. Violations of chapter: Penalties.	

Reports by Dairies, Creameries and Cheese Factories.

Sec. 1146. The Dairy, Food and Oil Commissioner shall furnish blanks to all proprietors or managers of creameries, cheese factories or milk dairies that ship milk, and all vendors and peddlers of milk and dairy goods handled, and all owners or managers of such creameries and cheese factories, and all milk dairies and all milk vendors, or milk peddlers, shall fill out the blanks, giving a full and accurate report of the business done during the year, and send them to the Dairy, Food and Oil Commissioner before the first day of November of each year. Every person or corporation who shall engage in the business of purchasing or dealing in milk shall attach in a permanent manner to each can furnished by him or the producer, a tag containing in plain figures a correct statement of the capacity thereof.

Any neglect or failure or false statement on the part of the proprietor or manager of such creamery, cheese factory, dairy, or milk vendor or milk peddler, shall be considered a misdemeanor, and

upon conviction thereof the person guilty shall be punished as provided in Section 1149: *Provided*, That any information thus furnished shall be published only in such form as to show totals and averages, and not the details of the business of any individual or concern.

Historical: Laws 1905, 54, Sec. 12. | “shall be punished” to complete the
“The person guilty” inserted before | sense.

Clerks to Aid Commissioner.

Sec. 1147. All clerks, bookkeepers, express agents, railroad officials, employee or employees of common carriers shall render to the Dairy, Food and Oil Commissioner, and his deputies, all the assistance in their power in tracing, finding or discovering the presence of any article named in this chapter. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employee or employees of common carriers to render such friendly aid, shall be a misdemeanor.

Historical: Laws 1905, 54, Sec. 21.

Samples for Analysis to Be Furnished.

Sec. 1148. Every person, company, or corporation who manufactures, produces, sells or exposes for sale, in the State of Idaho, any article of food, drink or illuminating oil, shall furnish, within business hours and upon tender and full payment of the selling price, a sample of such article of food, to any person who shall apply for such sample to such manufacturer, producer, or person, company, or corporation selling or exposing for sale as aforesaid, such article of food, drink or illuminating oil, in sufficient quantity for an analysis of any such article or articles in his possession.

Historical: Laws 1905, 54, Sec. 37. | “who shall apply” are transposed to
The words “for such sample” after | make the section clearer.

Violations of Chapter: Penalties.

Sec. 1149. Any person, manufacturer, producer, or dealer who refuses to comply, upon demand, with the requirements of the preceding section, or who shall obstruct the Dairy, Food and Oil Commissioner in the performance of his duties under this chapter, or whoever violates any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction, shall be fined not exceeding one hundred dollars, nor less than twenty-five dollars, or imprisoned not exceeding ninety nor less than thirty days, or both. Any person found guilty of manufacturing or offering for sale, or selling, any adulterated, impure, or misbranded article of food, drink or illuminating oil, in violation of the provisions of this chapter shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated or misbranded articles, which said person may have been found guilty of manufacturing, selling or offering for sale. And in addition thereto, such adulterated, impure, or misbranded article or articles, shall be confiscated, and upon the order of any court of competent jurisdiction, the Commissioner shall destroy the same: *Provided*, That in case the legal disability which exists against such article, or articles, is one which can be removed by proper labeling,

the Commissioner shall sell the same and pay the proceeds into the State Treasury, where they shall be placed to the credit of the dairy, food and oil fund.

Historical: Laws 1905, 54, Sec. 38.

Possession Evidence of Guilt.

Sec. 1150. Possession by any person or firm of an article or substance the sale of which is prohibited by this chapter, shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this chapter, and the Commissioner shall be authorized to seize upon and take possession of such article or substance, and upon the order of any court of competent jurisdiction, he shall dispose of the same as provided in the preceding section.

Historical: Laws 1905, 54, Sec. 39.

Certificate of Chemist Prima Facie Evidence.

Sec. 1151. In all prosecutions arising under this chapter, the certificate of the chemist making the analysis or testing, when duly sworn to by such analyst, shall be prima facie evidence of the fact or facts therein certified.

Historical: Laws 1905, 54, Sec. 22.

Subpoena for State Chemist.

Sec. 1152. In any prosecution under this chapter, whenever the Dairy, Food and Oil Commissioner shall certify that the presence of the State Chemist is necessary as a witness in the trial of the cause, the judge of the court, or the probate judge of the county wherein such trial shall be held, shall issue a subpoena for his attendance at the trial; and it shall be the duty of the State Chemist to obey said subpoena, and all his actual and necessary expenses shall be paid by the county wherein said trial was held in the same manner that county officers are paid, and in case of conviction, shall be charged to the defendant as part of the costs of the prosecution.

Historical: Laws 1905, 54, Sec. 40.

THE LIVESTOCK INDUSTRY

CHAPTER 4.

INSPECTION AND SUPPRESSION OF DISEASES AMONG LIVESTOCK.

Article

1. The Livestock Sanitary Board.
2. State Veterinary Surgeon and livestock inspectors.
3. Treatment of diseased animals.
4. Restrictions on the importation of livestock.
5. Inspection of sheep.

Article

6. Extermination of predatory animals.
7. General provisions relating to the inspection of animals.
8. Regulations governing diseased animals.

Note: The subject matter of this chapter has been a fruitful source of legislation, which, until the enactment of the 1905 law herein contained, was confined to the inspection and sanitary regulation of sheep. Rev. St. 1887, Secs. 1213-1222, authorized the appointment of sheep com-

missioners in each county, who were intrusted with the duty of inspecting bands of sheep therein. These sections were superseded by Laws 1893, 79, which, however, perpetuated the same system with additional provisions. The latter act was in turn repealed by Laws 1895, 124, which inaugurated the present system of State inspection, providing for the appointment of a State Inspector and deputies. The act of 1895 was re-enacted, with the exception of certain sections which had been held unconstitutional, by Laws 1899, 184, but was repealed by Laws 1899, 352. An act of 1901 (Laws 1901, 142) repealed this latter act of 1899. Some sections of the 1901 law are still in force as will appear from the historical notes under various sections of this chapter. The act of 1905 (Laws 1905, 39) which, as said above, forms the basis of this chapter, for the first time applied the inspection and quarantine regulations to cattle and other animals, and repealed such sections of the 1901 sheep law as created the office of sheep inspector and deputy inspectors, leaving the other sections in force in so far as they were not inconsistent or in conflict with the 1905 law, and imposing the duties of sheep inspector and deputy sheep inspectors on the Veterinary Surgeon and his assistant, and the livestock inspectors created by the 1905 law. This engraftment of one law upon another has made the compilation of this chapter the most difficult of any in the Codes, and the result is, to the Commissioner, the least satisfactory. It is believed, however, that the material substance of the 1901 law is preserved in this chapter, omitting those sections which are repeated verbatim, or the subject matter of which is completely covered, by the 1905 law.

The article on predatory animals was tacked to the 1905 law in 1907, and Article 8, concerning diseased animals, is an independent act of 1903. The references are given in the historical notes.

ARTICLE 1.

THE LIVESTOCK SANITARY BOARD.

Section	Section
1153. Constitution of Board.	1156. Sanitary Board may prescribe rules.
1154. Compensation and general duties.	1157. Annual report.
1155. Allowance of bills.	

Constitution of Board.

Sec. 1153. The Governor is authorized to appoint a State Livestock Sanitary Board consisting of seven members, one from each judicial district of the State; three members from the cattle interests; three members from the sheep interests, and one member from the horse interests in this State. The members of said board, before entering upon their duties, shall take the oath of office and file the same with the Secretary of State. All members shall be appointed for a term of two years, four being appointed in each odd numbered year, and three in each even numbered year: *Provided*, That the present members of said board shall continue to hold office for the remainder of their respective unexpired terms. The board shall select one of their number president and shall appoint a secretary for the board.

Historical: Laws 1905, 39, Sec. 1. Omitting the provision for the appointment of the first board, and rewritten to preserve the constitution of the present board.

Constitutionality: The act which commences with this section is constitutional. *Noble v. Bragaw* (1906) 12 Ida. 265; 85 Pac. 903.

Compensation and General Duties.

Sec. 1154. The members of said Sanitary Board shall receive no compensation for their services, but must be allowed their actual hotel and traveling expenses incurred by them while engaged in the performance of their duties, to be paid out of the fund hereinafter created to be known as the livestock sanitary fund. The secretary

shall be paid a salary of six hundred dollars per annum, payable monthly, out of said fund.

It is hereby made the duty of said board to exercise a general supervision over, and so far as may be, to protect the livestock interests of the State from losses from theft and disease, and to devise and recommend from time to time such legislation as in their judgment will foster and promote this industry.

Historical: Laws 1905, 39, Sec. 2.

Allowance of Bills.

Sec. 1155. All bills for expenses incurred under the provisions of this chapter shall be certified by the Sanitary Board to the State Board of Examiners, and when allowed by them shall be paid by warrants drawn on the livestock sanitary fund in the State Treasury.

Historical: Laws 1905, 39, Sec. 3.

Sanitary Board May Prescribe Rules.

Sec. 1156. The Livestock Sanitary Board, with the State Veterinary Surgeon, is hereby empowered to make all needful rules and regulations for the proper enforcement of this chapter.

Historical: Laws 1905, 39, Sec. 34.

Annual Report.

Sec. 1157. The board shall make an annual report, in writing, to the Governor, on or before the first day of December of each year, and must state therein the transactions of the board for the previous year.

Historical: Laws 1905, 39, Sec. 4.

Cross Reference: Reports of officers and boards: Sec. 279.

ARTICLE 2.

STATE VETERINARY SURGEON AND LIVESTOCK INSPECTORS.

Section	Section
1158. Veterinary Surgeon: Appointment and qualifications.	1167. Duties of livestock inspectors.
1159. Duties of Veterinary Surgeon.	1168. Same: Quarantine of diseased animals.
1160. Same: Quarantine of infected premises.	1169. Supervision by State Veterinary Surgeon.
1161. Same: Slaughter of diseased animals.	1170. Inspectors to keep record.
1162. Same: Compensation need not be made: Destruction of carcasses.	1171. Report of inspectors.
1163. Report by Veterinary Surgeon.	1172. Official misconduct: Penalty.
1164. Appointment of assistants.	1173. Power to administer oaths: Perjury.
1165. Livestock inspectors: Appointment.	1174. Inspectors may make arrests: Conduct of prosecutions.
1166. Same: Examination.	1175. Duplicate receipts for money received.

Veterinary Surgeon: Appointment and Qualifications.

Sec. 1158. The Governor is authorized to appoint a State Veterinary Surgeon, who shall hold his office for a term of two years, unless sooner removed for incompetency or neglect of duty. Said appointee shall be a graduate of some recognized college of veterinary surgery

of good standing and repute. Said Veterinary Surgeon shall receive an annual salary of eighteen hundred dollars, to be paid monthly as the salaries of other State officers are paid. He must, before entering upon the duties of his office, take the official oath and execute a bond in the sum of five thousand dollars, to be approved by the Governor and filed with the Secretary of State. Said Veterinary Surgeon shall be allowed his actual and necessary traveling expenses, to be audited by the State Board of Examiners, in an amount not exceeding in the aggregate, one thousand dollars per annum, to be paid out of the livestock sanitary fund.

Historical: Laws 1905, 39, Sec. 5. "The livestock sanitary" inserted for "said" fund in the last line. There

can be no doubt that that was the fund intended.

Duties of Veterinary Surgeon.

Sec. 1159. It shall be the duty of the State Veterinary Surgeon to investigate all cases of contagious and infectious diseases among horses, cattle, sheep, goats, mules, asses and swine in the State, which may come to his knowledge, and to make official visits of inspection to any locality where such diseases exist, or where he has information or reason to believe such diseases do exist; also, to inspect or cause to be inspected all such animals as may be brought into this State in any manner, or by whatsoever means, from any other State, Territory or foreign country, and particularly from any locality included or defined in any proclamation issued by the Governor, establishing a quarantine of any of the classes of animals enumerated herein. The said Veterinary Surgeon shall have the same power within the entire State as the livestock inspectors appointed by him have in their respective districts, and where the services of the Veterinary Surgeon are demanded in a county or district other than that in which he resides, to settle differences between sheepmen and any livestock inspector, it shall be the duty of the said Veterinary Surgeon to go and adjust such differences, and the said party or parties demanding such services shall pay the actual traveling expenses of said Veterinary Surgeon.

Said Veterinary Surgeon shall devote his entire time to the work of his office, to the exclusion of private business, and he may be removed by the Governor for inattention to duty or incompetency.

Historical: Laws 1905, 39, Sec. 6, combined with the second paragraph of Laws 1901, 142, Sec. 2, in which the words "State Sheep Inspector"

are changed to "Veterinary Surgeon" and "deputies" to "live stock inspectors" as provided in the act of 1905.

Same: Quarantine of Infected Premises.

Sec. 1160. In all cases of contagious or infectious diseases among any animals mentioned in this chapter, the Veterinary Surgeon has authority to order a quarantine of the infected premises, and in case such disease becomes epidemic in any locality in this State, he must immediately notify the Governor, who must thereupon issue a proclamation forbidding any animal of the kind among which such epidemic exists being transferred from said locality, which locality shall be defined in said proclamation, without a certificate from the Veterinary Surgeon showing such animal to be in good health. The expenses of holding, feeding and taking care of all animals quaran-

tined under the provisions of this chapter must be paid by the owner, agent or person in charge of such animals.

Historical: Laws 1905, 39, Sec. 7.

Same: Slaughter of Diseased Animals.

Sec. 1161. In case of any epidemic of disease where premises have been previously quarantined, the Veterinary Surgeon is authorized and empowered, when in his judgment necessary, to cause the slaughter of any and all such diseased animals upon said premises, and to continue in quarantine all such animals as have been exposed to contagion or infection. The order to slaughter such animals must be in writing and in duplicate, and there must be a separate order and duplicate for each owner of the animals so condemned and slaughtered. The original of such order shall be filed by the Veterinary Surgeon with the auditor of the county, and the duplicate given to the owner.

Historical: Laws 1905, 39, Sec. 8.

Same: Compensation Need Not Be Made: Destruction of Carcasses.

Sec. 1162. Any of the animals of the classes hereinbefore enumerated which shall be or become infected with any incurable disease, shall possess no property value and may be condemned and destroyed without compensation to the owner, and it is the duty of the Veterinary Surgeon, or his assistant, or the livestock inspector, to superintend the slaughtering of such animals as may be condemned, and the destruction of the carcasses, which latter shall be burned to ashes or buried in the earth to a depth of not less than six feet, and be covered with lime or coal oil.

Historical: Laws 1905, 39, Sec. 9.

Report by Veterinary Surgeon.

Sec. 1163. The Veterinary Surgeon must make an annual report, on or before the fifteenth day of November, to the State Sanitary Board, of all matters connected with his work for the previous year, and the board must make the same a part of their annual report to the Governor. They must also transmit to the several boards of county commissioners such parts of the report as they consider necessary and of general interest to the breeders of livestock.

Historical: Laws 1905, 39, Sec. 10.

Appointment of Assistants.

Sec. 1164. The State Veterinary Surgeon may appoint assistant veterinary surgeons, not exceeding two in number, to act in case of emergency, who shall receive compensation for actual time engaged, not to exceed five dollars per day and actual and necessary hotel and traveling expenses, to be paid out of the livestock sanitary fund. They shall take the oath of office and give bond in the sum of two thousand dollars, to be approved by the president of the State Sanitary Board and filed with the Secretary of State.

Historical: Laws 1905, 39, Sec. 13.

Livestock Inspectors: Appointment.

Sec. 1165. The Sanitary Board shall divide the State into as many districts as may be deemed necessary and the State Veterinary Surgeon shall appoint one or more livestock inspectors for each district. Such livestock inspectors shall receive compensation to be fixed by the State Sanitary Board not to exceed five dollars per day, to be paid monthly out of the livestock sanitary fund. Such inspectors shall take the oath of office and shall give bond in the sum of two thousand dollars, to be approved and filed as provided in the last section. Such assistant veterinary surgeons, and such inspectors shall hold office during satisfactory service, but shall be removable by the State Veterinary Surgeon for cause.

Historical: Laws 1905, 39, Sec. 14.

Same: Examination.

Sec. 1166. The State livestock inspectors shall be appointed after an examination to be conducted in the following manner: The State Veterinary Surgeon shall furnish to the members of the Sanitary Board for each judicial district a list of questions to be submitted to the candidates for positions as livestock inspectors. Such member of the board shall, after publication in some newspaper published in each county in his district for a period of two weeks designating a time and place for such examination, examine such applicant upon said questions, and take his answers in writing and forward both questions and answers to the State Veterinary Surgeon, who shall thereafter appoint, as inspectors for said district, those persons whom he shall deem, from such examination, best qualified for said office.

Historical: Laws 1905, 39, Sec. 15.

Duties of Livestock Inspectors.

Sec. 1167. The livestock inspector must inspect all livestock in his district and in case he finds the same are free from disease, but not otherwise, he shall issue a certificate stating such fact; but if he finds such livestock are diseased, or have been herded upon the range or in corrals which have, within the thirty days previous, been used or occupied by any diseased or infected livestock, he shall forthwith quarantine the same and notify the State Veterinary Surgeon. Such inspector or the Veterinary Surgeon or his assistant, shall personally supervise the dipping of all animals herein enumerated within their respective districts, and shall fix a day for each and every dipping, and are hereby authorized to determine and decide the proportions of material and the component parts of the mixture used in such dip.

Historical: Laws 1905, 39, Sec. 16.

Same: Quarantine of Diseased Animals.

Sec. 1168. Upon receipt by the Veterinary Surgeon, assistant surgeon or inspector, of information in writing that animals of the classes mentioned in this chapter are diseased, the said Veterinary Surgeon, assistant surgeon or inspector, shall immediately cause such diseased animals and all animals running with them, or in the same band or herd, to be quarantined and held within a certain boundary to be defined by him, until such disease has been eradicated.

Historical: Laws 1905, 39, Sec. 17.

Supervision by State Veterinary Surgeon.

Sec. 1169. The assistant veterinary surgeons, and the livestock inspectors shall be under direct control of the State Veterinary Surgeon, and answerable to him for any neglect of duty enjoined upon them by this chapter.

Historical: Laws 1905, 39, Sec. 25.

Inspectors to Keep Record.

Sec. 1170. Every inspector appointed under the provisions of this chapter must keep a book to be known as the inspection record, in which he must enter and record all his official acts as such inspector. Such record must particularly show the names of the owner of every animal, band or flock so inspected and the number in such band, herd or flock; the result of such inspection, the names of persons to whom certificates have been granted and when, the brands upon said livestock and all orders and directions made by him in relation to matters herein designated.

Historical: Laws 1905, 39, Sec. 26.

Report of Inspectors.

Sec. 1171. Every inspector must, on or before the first day of November of each year, report to the State Veterinary Surgeon, in writing, showing from his inspection records the matters therein contained since his last report, and the Veterinary Surgeon must embody such of said information as he shall deem of importance in his report to the Livestock Sanitary Board.

Historical: Laws 1905, 39, Sec. 27.
"Livestock Sanitary Board" inserted for "Governor" at the end of the section. The Veterinary Surgeon re-

ports to the Sanitary Board (Sec. 1163), and the board reports to the Governor (Sec. 1157).

Official Misconduct: Penalty.

Sec. 1172. Any officer appointed under the provisions of this article, who, by virtue of the power conferred upon him by such appointment, oppresses, wrongs or injures any person, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars.

Historical: Laws 1905, 39, Sec. 28.

Power to Administer Oaths: Perjury.

Sec. 1173. The State Veterinary Surgeon and his assistants, and the livestock inspectors appointed under this article, shall have the power to administer oaths so far as the same may be necessary in the proper performance of their duties, and any person who shall, contrary to said oath, state as true any material thing which he knows to be false, is guilty of perjury.

Historical: Laws 1901, 142, Sec. 7.
The words "State sheep inspector" changed to "State Veterinary Sur-

geon" and "deputies" to "assistants" and "livestock inspectors," to conform to Laws 1905, 39.

Inspectors May Make Arrests: Conduct of Prosecutions.

Sec. 1174. The assistant veterinary surgeons and all livestock in-

spectors are hereby given the power, and it is made their duty, to arrest and bring before a justice of the peace, or other court having jurisdiction of the same, all persons found violating any of the provisions of this chapter, where a complaint shall be filed by such livestock inspector, either upon his own knowledge or upon the information of such violation; whereupon a hearing shall be had as in other like criminal cases; and such livestock inspectors are hereby vested with the same authority to arrest and to require aid, in the execution of their said office, as sheriffs and their deputies of the several counties of the State: *Provided*, That the provisions of this chapter, requiring the livestock inspector to prosecute for a violation of the provisions hereof, shall not be construed so as to prevent such prosecution from being commenced and prosecuted by other persons as criminal actions are commenced and prosecuted in other cases.

The assistant veterinary surgeons and livestock inspectors, as full compensation for their services in prosecutions under this chapter, shall be allowed five dollars per day, and the same shall be assessed as costs in the case against the defendant.

Historical: Laws 1901, 142, Sec. 27. The words "deputy sheep inspector" changed to "assistant veterinary sur-

geons" and "livestock inspectors," to conform to Laws 1905, 39.

Duplicate Receipts for Money Received.

Sec. 1175. Whenever the Veterinary Surgeon, any assistant surgeon or any inspector shall be paid or shall receive any moneys provided to be paid under this chapter, he shall make out a receipt therefor in duplicate, giving one receipt to the party making such payment and forwarding the other, within five days thereafter, to the State Auditor to be filed and preserved in his office, and shall within the same time, forward all such sums to the State Treasurer, taking his receipt therefor in duplicate, preserving one such with the records of his office, and forwarding the other to the State Auditor within five days after the receipt thereof from the State Treasurer. All money so received shall be placed in the livestock sanitary fund. Any officer failing to comply with the provisions of this section shall be deemed guilty of embezzling such sum, and shall be punished as is by law provided for such offense, and shall forthwith be removed from office.

Historical: Laws 1905, 39, Sec. 37.

ARTICLE 3.

TREATMENT OF DISEASED ANIMALS.

Section

- 1176. Scab among animals: Dipping: Quarantine.
- 1177. Refusal to dip animals: Treatment by inspector.
- 1178. Expense of dipping a lien: Enforcement.
- 1179. Quarantine of lambing sheep.
- 1180. Same: To be hand dressed or spotted.

Section

- 1181. Failure to dip sheep: Punishment.
- 1182. Veterinary Surgeon may require all sheep to be dipped.
- 1183. Disease on the range: Quarantine of horses and cattle.

Scab Among Animals: Dipping: Quarantine.

Sec. 1176. Whenever, upon the examination of any of the classes

of animals enumerated in this chapter, kept or herded in any county of this State, the State Veterinary Surgeon, or his assistants or any inspector, shall find such animals or any portion of them affected or infected with the scab, or scabbies, or any other infectious or contagious disease, the entire band or herd shall be considered as infected and treated as such, and such Veterinary Surgeon, assistant or inspector, as the case may be, shall immediately quarantine the same and forthwith notify the owner or persons in charge of said animals, in writing, of such quarantine; and the officer taking said animals in charge may cause the same to be dipped, twice if necessary, and, during such period, keep such animals free from contact with other animals not affected by such means as he shall specify. *Provided*, That in the case of any animals, which on account of their condition, or by reason of inclemency of the weather, shall be, in the opinion of the State Veterinary Surgeon, his assistant or deputy, unfit or unsafe to dip; then such officer may authorize such owner or controller to place such animals in a corral, field or feed yard, where such animals shall be kept free from contact with other animals until such time as they are in a condition to dip. Such owner or controller shall be responsible for any or all damages which shall be sustained by any person by reason of such animals coming in contact with healthy animals. Any person or persons so allowed to keep such animals in such corral, field or feed yard, who shall wilfully or knowingly take or permit to be taken any such animals from such corral, field or feed yard, except as the same shall, by the inspector, be directed or permitted to be taken to the dip works, shall upon conviction thereof, be punished by a fine of not less than one hundred dollars, nor more than two thousand dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment.

Historical: Laws 1905, 39, Sec. 22.

Refusal to Dip Animals: Treatment by Inspector.

Sec. 1177. Should any owner or person in charge of any animal or animals found to be infected with disease, upon examination by the Veterinary Surgeon, assistant surgeon or inspector, fail or refuse to dip the same, or do so in an improper manner, it shall be the duty of such officer to seize said animals and to dip the same, and when the same shall have been dipped, he shall notify the owner or person in charge of such animals of the amount of costs, charges and expenses due for the same. If such person in charge shall neglect or refuse for a period of ten days after receiving said notice to pay the same, together with all further costs, charges and expenses of holding said animals, it shall be the duty of said inspector to sell, in the manner provided in this chapter, so many of said animals as shall be necessary to pay the same, and all costs and expenses of said sale.

Historical: Laws 1905, 39, Sec. 23.
 "Provided in this chapter" substituted for "hereinbefore in this act provided" in view of altered arrangement of sections.

Cross Reference: Sales of animals: Sec. 1186.

Expense of Dipping a Lien: Enforcement.

Sec. 1178. All expenses incurred incident to the dipping and plac-

ing in quarantine of any of the animals enumerated in this chapter, including a compensation of five dollars per day for every day or part of day in which the Veterinary Surgeon or his assistant or inspector may be engaged in dipping any of said animals, shall be borne by the owner of such animals, and such expense shall be, and is hereby made, a first lien upon said animals, and if the same is not paid within ten days after notice to such owner, his agent, or the person in charge, the said officer shall sell, at public auction, in the manner provided for sales under executions out of the District Court, so many of said animals as shall be necessary to realize sufficient money to pay such expenses, together with the costs and charges of the sale.

Historical: Laws 1905, 39, Sec. 24. The phrase "shall be borne by the owner of such animals" is transposed for grammatical reasons. "For sales"

is inserted before "under executions out of the District Court."

Cross Reference: Sales under execution: Secs. 4481-4489.

Quarantine of Lambing Sheep.

Sec. 1179. When any sheep are, on account of lambing, in the opinion of the State Veterinary Surgeon, his assistant or deputy, unfit or unsafe to dip, such officer may authorize the owner or controller thereof to place such sheep in a corral, field or feed yard, where such animals shall be kept free from contact with other animals until such time as they are in a condition to dip. Such owner or controller shall be responsible for any or all damages which shall be sustained by any person by reason of such animals coming in contact with healthy animals.

Historical: Laws 1905, 39, part of Sec. 22. The section is contained in full in Sec. 1176 ante. The part of the section contained above, is here repeated in a slightly modified form applicable only to lambing sheep, in lieu of Laws 1901, 142, Sec. 12, which is superseded by this part of the section, in order to give a setting to the following section, taken from the 1901 law, which is not inconsistent with any provision of the 1905 law. This section is really a composite of

Laws 1901, 142, Sec. 12, and Sec. 22 of the 1905 law. The 1901 law left the dipping of lambing sheep to the discretion of the owner, while the 1905 law entrusted the determination of that question to the Veterinary Surgeon and inspectors. To have omitted, in this place, a section corresponding to Sec. 12 of the 1901 law, would have rendered the following section unintelligible, and would not have fairly preserved so much of the 1901 law as is left in force.

Same: To Be Hand Dressed or Spotted.

Sec. 1180. It shall also be the duty of the assistant veterinary surgeon or livestock inspector to require the owner, owners or controllers of sheep, while held in quarantine during the period mentioned in the preceding section, to spot or hand dress all sheep in their band or bands that show any scab, or any contagious or infectious disease, with some reliable medicine, and such assistant veterinary surgeon or livestock inspector shall have the power to enforce such hand dressing or spotting during the period above referred to, the same as they have power to enforce dipping at any other period of the year, as provided in this chapter.

Historical: Laws 1901, 142, Sec. 13. The words "deputy sheep inspector" changed to "assistant veterinary sur-

geon" or "livestock inspector," to conform to Laws 1905, 39.

Failure to Dip Sheep: Punishment.

Sec. 1181. The owner or owners or controller of any sheep or the

assistant veterinary surgeon or livestock inspector, or persons appointed by either of them, who shall fail to dip said sheep as required by the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than three hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than two months nor more than six months, or by both such fine and imprisonment.

Historical: Laws 1901, 142, Sec. 11.
The words "deputy inspector"
changed to "assistant veterinary sur-

geon or livestock inspector," to conform to Laws 1905, 39.

Veterinary Surgeon May Require All Sheep to Be Dipped.

Sec. 1182. With the object of eradicating scab and any other contagious or infectious disease among sheep, the State Veterinary Surgeon is empowered to require all sheep to be dipped once during each year, whether the same are diseased or not, and in case of diseased animals, as often as, in his judgment, such dipping may be required.

Historical: Laws 1905, 39, Sec. 38.

Disease on the Range: Quarantine of Horses and Cattle.

Sec. 1183. If any infectious disease is prevalent on any range, the State Veterinary Surgeon is hereby empowered to declare a quarantine for all horses or cattle or both exposed to such epidemic within a certain area or distance or country to be defined by him, and to require the owners or persons in charge of any horses or cattle or both running on the range within said area, district or country, so defined, to assemble all range horses or cattle, or both, so owned or held in charge by them, at a designated point or place in said district or country, on a date or dates to be specified, for the purpose of dipping the same, and it is hereby made the duty of all such persons to drive, or procure to be driven, all range horses or cattle, or both, as required, owned by them or under their control, to the designated point or place and at the time mentioned, and there to dip the same. Notice of the time and place where said animals will be dipped shall be given by the State Veterinary Surgeon by publication in one or more newspapers published within the area, district or country specified, which notice shall specify the time and place where such dipping shall be had. Said notice shall be published for a period of thirty days before the date set. The cost of such dipping shall be fixed by the State Veterinary Surgeon, and shall be a first lien upon all live stock so dipped. The amount thereof, provided the same shall not be paid, shall be collected by a sale of so many of said live stock as shall be necessary, such sale to be conducted as provided in this chapter. All range horses or cattle within the area, district or country aforesaid which shall not be brought to the appointed place at the appointed time, as required, to be dipped, shall be gathered under the direction of the State Veterinary Surgeon, and shall be dipped, and the expense of such dipping, if the same be not paid, shall be a lien upon said animals to be collected as in this chapter provided. Any such animals running on the range which cannot be gathered may be killed on the order and under the direction of the

State Veterinary Surgeon. If any of the persons mentioned in this section shall fail to do as required herein he shall be guilty of a misdemeanor and upon conviction, shall be fined in any sum not to exceed one thousand dollars: *Provided*, Any person, persons, or company desirous of dipping the horses or cattle owned or controlled by them, may do so by providing the proper appliances and notifying the State Veterinary Surgeon or an assistant or the inspector of the district that, on a certain date, a certain party or parties will, at a certain place, dip such horses or cattle or both, and the State Veterinary Surgeon or his assistants or an inspector shall attend at such time and place, and take charge of the arrangements for such dipping with like powers as is provided in this chapter. The expenses of such Veterinary Surgeon or assistant surgeon or inspector in going to and returning from the place where such dipping takes place, including five dollars per day to said officer, shall be paid by the parties requiring his services as herein in this section provided.

Historical: Laws 1905, 39, Sec. 35. The phrase "as provided in this chapter" is substituted for "as hereinbefore in this act provided" in view

of the altered arrangement of sections.

Cross Reference: Sales of animals: Sec. 1186.

ARTICLE 4.

RESTRICTIONS ON THE IMPORTATION OF LIVESTOCK.

Section

1184. Prohibiting importation of animals from infected localities.

1185. Importation of sheep: Notice to livestock inspector.

Section

1186. Unlawful importation of animals: Seizure by inspector.

1187. Importation of diseased animals: Action for penalty.

Prohibiting Importation of Animals from Infected Localities.

Sec. 1184. Whenever the Governor of the State has reason to believe that scab or other contagious or infectious diseases of sheep, or any infectious or contagious diseases of any other of the classes of animals enumerated in this chapter, has become epidemic in a certain locality or localities of any other State or Territory, or that conditions exist that render such animals or any of them likely to convey disease, or whenever the State Veterinary Surgeon shall certify in writing to the Governor that conditions exist in certain localities in any other State or Territory that render any of the live stock coming therefrom likely to convey disease, the Governor shall forthwith, by proclamation, designate and schedule such locality or localities, and prohibit the importation from it or them of any of said animals into this State, except under such restrictions as he may deem proper. Any person, persons or corporations who, after publication of such proclamation, has or receives in charge any such animals from any of the prohibited districts, and transports, conveys or drives the same to and within the limits of any of the counties of this State, is punishable by a fine not exceeding five thousand dollars, nor less than two thousand dollars, and is liable for all damages that may be sustained by any person by reason of the importation or transportation of such prohibited animals: *Provided, however*, That nothing therein contained shall prohibit the transportation of any of said animals from such district through the State by railroad trains.

under such restrictions and regulations as may be prescribed by law, or by the Governor or State Veterinary Surgeon, or either of them.

Historical: Laws 1905, 39, Sec. 18.

Constitutionality: The act of which this section is a subsequent re-enactment (Laws 1899, p. 452) was held not to be in contravention of Sec. 8, Art. 1, nor Sec. 2, Art. 4 of the Constitution of the United States. *State v. Rasmussen* (1900) 7 Ida. 1; 59 Pac. 933.

This provision does not delegate to the Governor legislative power, but simply requires him to act when he ascertains that certain conditions exist. *Ib.*

Prosecution—Intent Necessary: No evil or criminal intent need be alleged or proven in a prosecution for driving sheep into the State in violation of a proclamation of the Governor made under this section. *State v. Keller* (1902) 8 Ida. 699; 70 Pac. 1051.

Same—Liability to Communicate Disease: The fact that sheep have been in an infected district against which a quarantine has been declared, and the fact that such sheep were driven direct from such district into this State, is sufficient to establish a capability and liability to communicate disease. *State v. Rasmussen* (1900) 7 Ida. 1; 59 Pac. 933.

Same—Venue: Bringing sheep into any county of the State from a quar-

antined district is an offense, and prosecution therefor may be instituted in any county where the sheep are found. *Ib.*

Equitable Relief: A bill by sheep owners, alleging that defendant, acting under a proclamation issued by the Governor prohibiting the importation of any sheep from an adjoining State for the period of forty days, prevented complainants from driving their sheep across the line into Idaho for pasturage on their own and the public lands within the State, and for shipment to market, states a cause of action for equitable relief by injunction, where it is also alleged that such sheep are free from disease and have been so found by the United States inspectors; that there was no infectious disease epidemic on the range where they were or had been; and that the reasons stated in the proclamation were false and groundless, and were based on statements made by defendants and others for the purpose of excluding sheep of other owners, and securing a monopoly of the grazing on the public lands within the State, and where it is further shown that the exclusion would work irreparable injury on the complainants. *Smith v. Lowe* (1903) 121 Fed. 753.

Importation of Sheep: Notice to Live Stock Inspector.

Sec. 1185. Any person, persons, company, corporation or association, or any agent or employee of any person, persons, company, corporation or association, who shall drive or herd, or cause to be driven or herded, or shall bring or cause to be brought, into the State of Idaho from any other State, any sheep, shall immediately, upon crossing the State line of Idaho, notify the livestock inspector of the county or district where said sheep crossed the State line, and before he shall proceed further than two miles from said State line into the State of Idaho he shall make an application in writing to such livestock inspector for the inspection of said sheep. Said application must be served on the inspector of that county or district in person or be left at his place of residence or sent by registered letter. Said notice must state the time and place said sheep crossed the State line, and the locality from whence they came, and must give the name and residence of the owners thereof and of the party in control of the same, also the number and brands of said sheep. Any inspector on receiving such notice shall at once proceed to inspect the sheep as set forth in the application, and if, upon the inspection, said inspector shall find that said sheep or any of them are affected with scab or other contagious or infectious disease, or have been exposed thereto within thirty days previous and have not been dipped, he shall, if he deem it necessary or desirable so to do, to prevent or avoid infection therefrom, cause said sheep to be quarantined at some place not more than two miles from the State line where said sheep entered the

State of Idaho, for a period of not more than thirty days, and, if deemed necessary by him, said inspector shall cause said sheep to be dipped not to exceed twice at the option of said inspector before they shall be released from such quarantine. Any person, persons, company, corporation or association, or his or their agent or employee, who shall ship by railroad into this State from any other State, any sheep, shall, immediately upon unloading the same at any point or place within this State, notify personally the inspector of the district within which said sheep shall be unloaded, and thereupon said inspector shall forthwith proceed to inspect said sheep and to quarantine and dip the same if, in his judgment, the same shall be necessary: *Provided*, The owners of any animals ridden under the saddle or driven in harness or under yoke into this State, or any person coming into this State with his own team or teams, is not required to notify the Veterinary Surgeon to await the inspection of the animals, but shall be liable for all loss or damages suffered by any person or persons by reason of any contagious or infectious disease brought into this State by his animals.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined in a sum of not less than one hundred dollars nor more than five thousand dollars. Such fine shall be a lien upon such animals and may be enforced by proper proceedings in any court of competent jurisdiction.

Historical: Laws 1905, 39, Sec. 19.

Unlawful Importation of Animals: Seizure by Inspector.

Sec. 1186. When any of the animals enumerated in this chapter are brought into the State in violation of this chapter, it shall be the duty of the inspector of the district wherein said animals may be, immediately to seize the same and hold them, and file a complaint in a court of competent jurisdiction charging the owner or person in charge of said animals with the violation hereof, and upon conviction of the defendant in said action, the said inspector shall, unless all fines, costs and charges be immediately paid, sell, in the same manner as sales of personal property are made on execution out of the District Court, so many of said animals as shall be necessary to pay the costs and charges of making such sale, including the compensation due the inspector, together with the fine imposed in said action, and a certified copy of the judgment in such action shall be his sufficient warrant for doing the same.

Historical: Laws 1905, 39, Sec. 20.

Cross Reference: Sales on execution: Secs. 4481-4489.

Importation of Diseased Animals: Action for Penalty.

Sec. 1187. Any person, persons, company, corporation, or association, which shall drive or cause to be driven, bring or cause to be brought, into this State from any other State any animals enumerated in this chapter, infected with scab or any contagious or infectious disease, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five thousand dollars, and in case the offending party is a company, corporation or association, it is hereby made the duty

of the prosecuting attorney of the county in which said judgment of conviction shall be had, to forthwith bring suit, to collect from said offending company, corporation or association, the amount of the penalty thus imposed, and he may cause attachment against the property of said company, corporation, or association, to issue and to be levied upon any property belonging to the defendant in said action, as security for any judgment which may be obtained therein.

Historical: Laws 1905, 39, Sec. 21.

ARTICLE 5.

INSPECTION OF SHEEP.

Section	Section
1188. Semi-annual and other inspections.	1193. Driving sheep into another's corral.
1189. Creation of inspection lines.	1194. Stray sheep.
1190. Crossing lines without certificate.	1195. Transportation of sheep; Certificate.
1191. Travel of diseased sheep.	1196. Liability for violating chapter: Sheep herders to give information.
1192. Inspector must first examine sheep.	

Semi-Annual and Other Inspections.

Sec. 1188. It shall be the duty of at least one assistant veterinary surgeon or livestock inspector in each county or district, to be designated by the State Veterinary Surgeon, to personally examine all sheep and bands of sheep in his county or district between the first day of March and the first day of June of each year, and again between the first day of September and the first day of November of each year; and the State Veterinary Surgeon may, at any time he deems necessary, order an inspection in any county or district; and to the owners and persons in charge of herds found to be clean, the assistant veterinary surgeon or livestock inspector shall issue a certificate stating such fact, which certificate shall permit such herds to pass into and through any and all counties in this State so long as they shall remain clean and free from disease; such assistant veterinary surgeon or livestock inspector is required to examine any band or bands of sheep at any time that he may be called upon to do so at the request of one or more sheep growers, in writing, stating that such sheep are affected or infected with some infectious or contagious disease, and that there is imminent and immediate danger of the spread of such disease: *Provided*, That if, upon examination, such sheep are found to be clean, the person or persons making such complaint shall pay the expenses of such examination, which may be recovered in a civil action therefor, but, in case such inspector, upon making such examination, finds said sheep diseased, he shall forthwith issue his order quarantining said sheep, and they shall be dealt with as provided in Section 1176.

Historical: Laws 1901, 142, Sec. 8. The words "deputy inspector" and "deputy" changed to "assistant veterinary surgeon or livestock inspector," and the words "State Sheep Inspector" changed to "State Veter-	inary Surgeon," to conform to Laws 1905, 39. The section of the 1901 law referred to in the last line was superseded by Sec. 22 of the 1905 law, which is Sec. 1176 of these Codes.
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Creation of Inspection Lines.

Sec. 1189. It shall be the further duty of the State Veterinary

Surgeon, with the assistance of the assistant veterinary surgeon and the livestock inspectors appointed by him in the several districts, to create what shall be known as "inspection lines," in each county or district where it shall be deemed necessary, between the summer and winter ranges. He shall cause a notice containing a careful description of said inspection lines in each district to be published for three weeks in some newspaper published in said district, and upon the last publication thereof due notice of the location of such inspection lines shall be deemed to have been given. The expense of such publication shall be a charge against the county where such notice is given, payable as other charges: *Provided*, That this section shall not be so construed as to prohibit other stock crossing said inspection lines, and occupying the range inclosed by said lines.

Historical: Laws 1901, 142, Sec. 5. The words "State Sheep Inspector" changed to "State Veterinary Surgeon"; and the words "deputy" and

"deputy sheep inspector" changed to "assistant veterinary surgeons and the livestock inspectors," to conform to Laws 1905, 39.

Crossing Lines Without Certificate.

Sec. 1190. It shall be unlawful for any person, persons, company or corporation, owning, controlling or managing any band or herd of sheep, to drive or herd, or cause to be driven or herded, across such line going to or returning from the summer range without first having his or their sheep inspected, and obtaining the Veterinary Surgeon's certificate, showing such sheep to be sound and free from scap.

Any person, persons, company or corporation violating this section shall be guilty of a misdemeanor, and shall be, upon conviction, punished by fine of two hundred and fifty dollars, and such fine shall constitute a first lien upon said sheep so driven or herded, and shall be collected as provided for in Section 1177.

Historical: Laws 1901, 142, Sec. 6. Words "Sheep Inspector" changed to "Veterinary Surgeon," to conform to Laws 1905, 39. The section referred

to in the last line is Sec. 14 of the 1901 law, which was superseded by Sec. 23 of the 1905 law, which is Sec. 1177 of these Codes.

Travel of Diseased Sheep.

Sec. 1191. Any person, persons, company or corporation, or association within the State desiring to move his or their sheep, which are not sound or are infected with scab or other infectious or contagious disease, shall first obtain from the assistant veterinary surgeon or livestock inspector a traveling permit. Such permit shall only be granted for the purpose of removing said shetp to the nearest suitable point where there are available dipping works, or where they can be constructed, at which place said sheep shall be dipped. Such sheep shall travel to said point over a route designated by the livestock inspector. The person or persons moving said sheep shall first notify all parties herding sheep along or over said route that the infected sheep have to travel, of the time they will pass over said route. Any person, persons, company, corporation, or association injured or damaged by reason of the moving of said sheep shall be entitled to recover from the person, persons, company, corporation or association moving the same, in a civil action, the amount of damage direct and consequential: *Provided, however*, No party shall be entitled to recover damages who voluntarily herds or causes to be herded any

sheep on quarantined ground. Said sheep so voluntarily herded shall be considered as scabby without inspection, and shall be treated as provided in Section 1176.

Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment.

Historical: Laws 1901, 142, Sec. 19. The words "deputy sheep inspector" changed to "assistant veterinary surgeon or livestock inspector" to conform to Laws 1905, 39. The section

referred to near the end of this section is Sec. 9 of the 1901 law, which was superseded by Sec. 22 of the 1905 law, and is found in Sec. 1176 of these Codes.

Inspector Must First Examine Sheep.

Sec. 1192. Any assistant veterinary surgeon or livestock inspector granting a permit allowing sheep to travel, without at the time having first examined the sheep, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than three hundred dollars and not more than five hundred dollars.

Historical: Laws 1901, 142, Sec. 20. The words "deputy sheep inspector" changed to "assistant veterinary sur-

geon or livestock inspector," to conform to Laws 1905, 39.

Driving Sheep Into Another's Corral.

Sec. 1193. It shall be unlawful for any person, persons, company corporation or association to drive or cause to be driven any sheep into any sheep corral, the property of another, without first having obtained the written consent of the owner or person having control or custody of such sheep corral. Any person, persons, company, corporation, or association violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than six months nor more than one year, or by both such fine and imprisonment.

Historical: Laws 1901, 142, Sec. 22. "The written consent" inserted in place of "in writing, the consent."

Stray Sheep.

Sec. 1194. If any person, persons, company or corporation in driving or herding any sheep should get into his or their herd any stray sheep, he or they must, within five days after discovering the fact, notify the owner thereof; and if the owner is unknown, he or they shall forthwith notify an assistant veterinary surgeon or the livestock inspector of such county, giving the number of such sheep and the brands of each.

Any person, persons, company, corporation or association violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars.

Historical: Laws 1901, 142, Sec. 26. The words "deputy sheep inspector" changed to "assistant veterinary sur-

geon or livestock inspector," to conform to Laws 1905, 39.

Transportation of Sheep: Certificate.

Sec. 1195. It shall be unlawful for any person, persons, company, corporation, or association, owning, controlling or managing a ferry boat, toll bridge, car, steamboat or other things used for transportation in the State of Idaho, to allow any sheep destined to points within the State to be loaded thereon, unless the party in charge of said sheep shall first produce a certificate from an assistant veterinary surgeon or livestock inspector, appointed under this chapter, that said sheep are free from scab, scabbies, and other infectious or contagious disease: *Provided*, That this shall in no case apply to sheep being shipped out of the State. Any violation of this section shall be deemed a misdemeanor and punishable by a fine of not less than five hundred dollars nor more than one thousand dollars.

Historical: Laws 1901, 142, Sec. 25. The words "deputy sheep inspector" changed to "assistant veterinary sur-

geon or livestock inspector," to conform to Laws 1905, 39.

Liability for Violating Chapter: Sheep Herders to Give Information.

Sec. 1196. In any action or proceeding, civil or criminal, arising under this chapter, all persons having any interest in sheep or controlling the same, and concerning which said action or proceeding is had, shall be deemed the owners of said sheep, and shall be liable, jointly and severally, for such violation. Any herder or shepherd or other person in charge of sheep may be sworn to give any assistant veterinary surgeon or livestock inspector any and all information as to the condition of the sheep in his charge, to the best of his knowledge, on being requested so to do by such assistant veterinary surgeon or livestock inspector, and upon refusing to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment.

Historical: Laws 1901, 142, Sec. 23. The words "deputy sheep inspector" and "deputy" changed to "assistant veterinary surgeon or livestock inspector", to conform to Laws 1905, 39.

Actions—Scienter Unnecessary: In a civil action for damages resulting from the negligence of the owner of sheep in permitting his herd, which

was afflicted with scab, to become mingled with the herd of another, and communicating the disease to such herd, it need not be alleged or proven that the defendant knew of the existence of scab among his sheep. *North & Douglas v. Woodland* (1906) 12 Ida. 51; 85 Pac. 215.

ARTICLE 6.**EXTERMINATION OF PREDATORY ANIMALS.****Section**

- 1197. Sanitary Board to supervise operations.
- 1198. Employment and duties of hunters.
- 1199. Same: Precautions against injury.
- 1200. Account and proof of destroyed animals.

Section

- 1201. Special tax to defray expenses.
- 1202. Bills: How drawn and allowed.
- 1203. Provisions made applicable to this article.
- 1204. Disposal of moneys received.

Sanitary Board to Supervise Operations.

Sec. 1197. It is hereby made the duty of the Sanitary Board to

exercise a general supervision over the subject of the killing and destruction of wolves, coyotes, wild cats and such other wild animals as are in the habit of preying upon and destroying sheep, calves, colts, pigs, poultry and other domestic animals and fowls and wild game, and to devise and put into operation such methods and means as will best secure and attain the object of exterminating such wild, destructive and pestiferous animals, and to this end they are hereby authorized and empowered to employ one or more experienced, competent and skillful hunters and trappers, as they may deem necessary, in each or any inspection district of the State; whose duty it shall be to work constantly and diligently with guns, traps, poison and any and every practicable means and methods, to procure and bring about the destruction of as many of such predatory animals as possible.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 41, Laws 1905, 39.

Employment and Duties of Hunters.

Sec. 1198. The hunters employed in accordance with the preceding section shall each receive such compensation as may be agreed upon beforehand, not exceeding three dollars and fifty cents per day, and their employment shall always be liable to be discontinued at any time, at the pleasure of the board, and it shall be the duty of each and all of them, at all times, to work at such localities and along such plans of operation as the board may, from time to time, direct, and the board is hereby empowered and authorized to purchase old or undersized and cheap horses and other animals to be killed and used as bait for the purpose of poisoning the pestiferous animals hereinbefore mentioned, as well as all necessary poisons to be used in connection therewith, and also such traps and ammunition as shall be necessary or useful for the purposes aforesaid: *Provided*, That the said trappers and hunters must use their own guns; and *Provided, further*, That the board shall never expend a greater sum of money in any one year than thirty-five thousand dollars, and whenever that amount has been expended in the year, then and thereafter any and all further expenditures for the purposes of this article shall terminate and cease.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 42, Laws 1905, 39.

Same: Precautions Against Injury.

Sec. 1199. It shall be the duty of the hunters and trappers aforesaid to exercise great care in putting out poison and to take every reasonable precaution to prevent it from being taken by dogs or other domestic animals, and to bury or destroy by burning all poisoned carcasses that have lain so long that they have ceased to be useful, or where they are so situated as to be easily accessible and dangerous to the dogs of those occupying the range during the grazing season, and when poison is put out on the range during said season they shall post four or more written notices in conspicuous places whenever practicable, on four sides, and within about one-fourth of a mile thereof, warning all persons of the same, and they shall not put out any poison within one mile of any inhabited dwelling house

without first notifying the occupant thereof of their intention so to do, nor within one-fourth of a mile of any such dwelling without the consent of such occupant, nor shall they put out poison within one-quarter of a mile of any public highway at any time, and any hunter or trapper, or other person employed by the State Sanitary Board, violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 43, Laws 1905, 39.

Account and Proof of Destroyed Animals.

Sec. 1200. Each and every hunter or trapper shall keep an accurate account of all animals destroyed by him, and furnish such proof thereof as may be required by the board, or by any rule or regulation thereof, and report the same at least once a month or oftener, if required, and shall also skin and preserve and dispose of, under the direction of the board, all hides and furs of value, the proceeds of which shall be accounted for and paid to the State Treasurer as provided in Section 1204.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 44, Laws 1905, 39.

Special Tax to Defray Expenses.

Sec. 1201. For the purpose of defraying the expenses necessarily to be incurred under this article, the board of county commissioners of the several counties in this State, at the time of the annual levy of taxes, shall levy a special tax of one-half mill on the dollar of the assessed valuation of all horses, cattle, goats, mules, asses and swine, and four mills on the dollar of the assessed valuation of all sheep, within their respective counties, which shall be collected and remitted to the State Treasurer in the same time and manner as other taxes, and kept in a separate fund to be known as "The Predatory Animal Fund", and paid out only as hereinafter provided.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 45, Laws 1905, 39.

Bills: How Drawn and Allowed.

Sec. 1202. All bills for expenses named under the provisions of this article shall be certified by the Sanitary Board to the Board of Examiners, and when allowed by them shall be paid by warrants drawn on the "Predatory Animal Fund" in the State Treasury: *Provided*, The said Sanitary Board shall not certify nor allow any claims in excess of thirty-five thousand dollars incurred in any one year, and the State Auditor is prohibited from drawing any warrants against said "Predatory Animal Fund" in excess of thirty-five thousand dollars for expenses incurred in any one year.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 46, Laws 1905, 39. "To the Board inserted

before "of Examiners" to complete the sense.

Provisions Made Applicable to This Article.

Sec. 1203. The provisions of Sections 1156 and 1157 of this chap-

ter are hereby made especially applicable to proceedings under this article, and in all other respects, this article shall be construed in harmony with the other provisions of this chapter, so far as the same can consistently be done.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 47, Laws 1905, 39. "The other provisions of this chapter" inserted for "the act of

which it is amendatory and supplemental." The act referred to is the one contained in this chapter.

Disposal of Moneys Received.

Sec. 1204. Any and all sums of money whatsoever, that may or shall be received by the State Sanitary Board, under or by virtue of any provision of this article, or for the purpose of carrying out the same, shall, within five days thereafter, be forwarded or paid to the State Treasurer, who shall receipt for the same in duplicate; one to be given to the board and the other to the State Auditor, and the same when received shall be credited to the predatory animal fund.

Historical: Laws 1907, 452, Sec. 1; amending, by adding Sec. 48, Laws 1905, 39.

ARTICLE 7.

GENERAL PROVISIONS RELATING TO THE INSPECTION OF ANIMALS

Section	Section
1205. Livestock sanitary fund: Special tax.	1209. Exposure of healthy animals to disease: Liability.
1206. Co-operation of United States Bureau of Animal Industry.	1210. Concealment of contagious diseases among animals.
1207. No sanitary inspection necessary when.	1211. Sale of diseased or exposed animals.
1208. Permission to operate shearing corral.	1212. Disposal of diseased carcasses.

Livestock Sanitary Fund: Special Tax.

Sec. 1205. The boards of county commissioners of the several counties of this State, at the time of the annual levy of taxes, must levy a special tax of three-fourths of one mill on the dollar of the assessed valuation of all horses, cattle, goats, mules, asses and swine; and three mills on the dollar of the assessed valuation of all sheep within their respective counties. Such tax shall be collected in the same manner and at the same time as other taxes, and paid over to the State Treasurer at the same time that other taxes are remitted, to be placed in, and to constitute a fund to be known as, the livestock sanitary fund, to be used in the payment of the salaries and expenses of the officers provided for in this chapter, except the salary of the State Veterinary Surgeon, which shall be paid as hereinbefore provided.

Historical: Laws 1905, 39, Sec. 29.
Cross Reference: Salary of Veter-

inary Surgeon payable as salaries of other State officers: Sec. 1158.

Co-operation of United States Bureau of Animal Industry.

Sec. 1206. The Governor shall, through the Secretary of Agriculture at Washington, ask the co-operation of the United States Bureau of Animal Industry in controlling and eradicating contagious and infectious diseases in animals enumerated in this chapter, and when said bureau, through its duly authorized representatives, agents or

employees, shall be thus engaged, they shall possess the same power and authority in this State as the State Veterinary Surgeon and his assistants under and by virtue of this chapter.

Historical: Laws 1905, 39, Sec. 30.

No Sanitary Inspection Necessary When.

Sec. 1207. No sanitary inspection shall be necessary, and no fee shall be collected from the owners of any livestock to which a clean bill of health has been previously granted by such authorities of the United States within ten days before the day that such livestock entered this State, provided the said livestock has not been exposed to contagion since the date of such inspection: *Provided*, That immediately after crossing the State line into this State, such owner, his agent, or person in charge of such livestock, shall, in person, or by registered letter addressed to the livestock inspector of said district, notify such inspector as provided in Section 1185, and that he or they hold a clean bill of health the day that such livestock entered this State.

Historical: Laws 1905, 39, Sec. 31.

Permission to Operate Shearing Corral.

Sec. 1208. No person, persons, corporation or company shall maintain or operate a public shearing corral, without permission having first been obtained from the State Veterinary Surgeon, and the sanitary arrangements at said corral shall be under the control of that officer. For a failure to comply with the regulations of the State Veterinary Surgeon in relation thereto such license may be revoked by said officer. Any person or corporation operating such a corral without a license shall be subject to a penalty of five hundred dollars, to be recovered in a civil action to be instituted by the prosecuting attorney on behalf of the county, and each day that said corral shall be maintained or operated without a license shall constitute a separate offense.

Historical: Laws 1905, 39, Sec. 32.

Exposure of Healthy Animals to Disease: Liability.

Sec. 1209. When any of the animals enumerated in this chapter which shall be suffering from scab or any other contagious or infectious disease shall be or become, through the fault or negligence, or with the previous knowledge of the owner thereof or the person in charge, mingled with healthy animals belonging to another, the owner of said diseased animals shall be liable in an action for all damages sustained by the owner of such healthy animals.

Historical: Laws 1905, 39, Sec. 36.

Concealment of Contagious Diseases Among Animals.

Sec. 1210. It is the duty of any person who knowingly has upon his premises, or upon the public domain, any case of contagious or infectious disease among such animals, to immediately report the same to the Veterinary Surgeon or livestock inspector, and the failure to do so, or an attempt to conceal the existence of such disease, or to

wilfully or maliciously obstruct or resist the Veterinary Surgeon, assistant surgeons or inspectors, in the discharge of their duties, shall constitute a misdemeanor, punishable by a fine of not less than one hundred dollars, nor more than two thousand dollars.

Historical: Laws 1905, 39, Sec. 11.

Sale of Diseased or Exposed Animals.

Sec. 1211. The following regulations must be observed in all cases of disease mentioned in this chapter: It shall be unlawful to sell, give away, or in any manner part with, to another, any animal affected with a contagious or infectious disease, or any animal which has, or which the owner, or his agent or employee, or the party in possession thereof, has reason to believe has, within thirty days next preceding such transfer, been exposed to any infectious or contagious disease, without first notifying the proposed purchaser or purchasers of said animal that is so affected or has been so exposed. It shall, likewise, be unlawful to sell, give away, or in any manner part with any of the meat of such animal, for use as food, or to sell, give away or part with, for use as food, any of the milk from any such animal, or to remove all or any part of the skin therefrom. A violation of the provisions of this section shall constitute a misdemeanor, and shall subject the party offending, upon conviction, to pay a fine of not less than two hundred dollars nor more than one thousand dollars.

Historical: Laws 1905, 39, Sec. 12.

Disposal of Diseased Carcasses.

Sec. 1212. It shall be the duty of any person or persons, company or corporation, owning any hog, cattle, horse, or other domestic animal, which dies from any infectious or contagious disease, to cremate, or cause to be cremated, bury or cause to be buried, at a depth of not less than three feet, the carcass of said dead animal, within twelve hours after the owner of said animal has knowledge of the death thereof. Any person or persons, company or corporation, violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars, nor more than three hundred dollars; and every twelve hours after the owner of said animal has knowledge of the death thereof, shall be declared a distinct and separate offense.

It shall be the duty of the road overseer to remove any dead animal from the public highways whose owners are unknown, and dispose of the same in the manner provided by this section.

Historical: Laws 1901, 24, Secs. 1, 2.

ARTICLE 8.

REGULATIONS GOVERNING DISEASED ANIMALS.

Section	Section
1213. Driving diseased animals into State.	1215. Impounding diseased animals.
1214. Diseased animals running at large.	1216. Liability for damages.

Driving Diseased Animals Into State.

Sec. 1213. It shall not be lawful for the owner of any domestic animal or animals, or any person having them in charge, knowingly to import or drive into the State any animal or animals having any contagious or infectious disease; and any person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum not less than ten dollars nor more than one hundred dollars, and be imprisoned in the county jail not more than three months, or both, in the discretion of the court.

Historical: Laws 1903, 201, Sec. 1.

Diseased Animals Running at Large.

Sec. 1214. Any person being the owner of any domestic animal or animals, or having the same in charge, who shall suffer any such domestic animal or animals having any contagious or infectious disease, knowing the same to be so diseased, to run at large upon any range, common, or highway, or who shall let the same approach within ten rods of any highway, or shall sell or dispose of any domestic animal or animals, knowing the same to be so diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum not exceeding five hundred dollars, and imprisoned in the county jail not less than six months.

Historical: Laws 1903, 201, Sec. 2.

Impounding Diseased Animals.

Sec. 1215. Any justice of the peace, upon proof before him that any animal or animals are going at large or driven in or through his county in violation of the preceding sections, shall order a constable or sheriff to impound them, and the owner thereof shall be held liable for all costs and damages. In case the owner is not known, said justice of the peace shall thereupon summon three disinterested citizens, who shall be stockowners of the neighborhood, to examine said animal or animals; said examiners, before entering upon the discharge of their duties, shall be sworn to make a true and faithful report without prejudice or favor. They shall, after making examination, return certified copies of the nature of the diseased animal or animals, together with an accurate description of each animal or animals, giving all brands, ear-marks, wattles, age, sex and class, to the justice of the peace by whom they were summoned, who shall, after entering the same upon his records, have published in some newspaper in the county for one week a notice where said animal or animals are impounded. If the owner does not claim said animal or animals, and pay all costs and damages within ten days after impounding, said justice of the peace shall order the constable or sheriff, to slaughter such animal or animals and destroy the carcass by burning to ashes.

When any diseased animal or animals are impounded by the constable or sheriff, the fees shall not be more than twenty-five cents per head for the first ten head, and ten cents per head for all additional animals impounded, the feeding and watering of such animal or animals shall be ordered by the constable or sheriff, and shall not exceed fifteen cents per day for each animal. All charges for impounding, examining, feeding, slaughtering and burning shall be paid by the county

in which said animal or animals were impounded, out of the general county fund.

Historical: Laws 1903, 201, Sec. 4.

Liability for Damages.

Sec. 1216. Nothing in this article shall be so construed as to prevent the recovery of damages in a civil action against any person or persons who shall sell, trade, or import, or drive into this State, such diseased animal or animals, or who shall allow such domestic animal or animals to run at large, or to approach nearer than within ten rods of any highway, and any person violating any of the provisions of this article, in addition to the penalties herein provided, shall be liable for all damages that may accrue to the party damaged by reason of said diseased animal or animals imparting disease.

Historical: Laws 1903, 201, Secs. 3, 5.

CHAPTER 5.

THE TWO MILE LIMIT LAW.

Section

1217. Herding within two-mile limit prohibited.

Section

1218. Same: Penalty.

1219. Sheep treated as estrays.

Herding Within Two Mile Limit Prohibited.

Sec. 1217. It is not lawful for any person owning or having charge of sheep to herd the same, or permit them to be herded, on the land or possessory claims of other persons, or to herd the same or permit them to graze within two miles of the dwelling house of the owner or owners of such possessory claim.

Historical: Rev. St. 1887, Sec. 1210. See 9 Ter. Ses. (1875) 110, Sec. 1.

Cited: Carter v. Wann (1899) 6 Ida. 556; 57 Pac. 314. Walling v. Brown (1903) 9 Ida. 184; 72 Pac. 960. Walling v. Brown (1904) 9 Ida. 740; 76 Pac. 318. Swanson v. Groat (1906) 12 Ida. 148; 85 Pac. 384.

Constitutionality: The regulations imposed by this section and the subsequent sections are a valid exercise of the police power of the State and not unconstitutional. (Stockslager, J., dissents.) Sifers v. Johnson (1901) 7 Ida. 798; 65 Pac. 709. Sweet v. Ballyntyne (1902) 8 Ida. 431; 69 Pac. 995. Spencer v. Morgan (1905) 10 Ida. 542; 79 Pac. 459. Walker v. Bacon (1905) 11 Ida. 127; 81 Pac. 155. Bacon v. Walker (1907) 27 Sup. Ct. Rep. 289.

Who Protected: This section pro-

fects any settler on land from the encroachments of sheep, whether such settler has title to the land or whether he holds it simply by naked possession. Sifers v. Johnson (1901) 7 Ida. 798; 65 Pac. 709. One who is the absolute owner in fee simple of the lands upon which his dwelling is situated is within the protection of this section. Risse v. Collins (1906) 12 Ida. 689; 87 Pac. 1006.

Sheep in Transit: This section does not prohibit the driving of sheep from one place to another, although such sheep pass within two miles of the dwelling house of a settler, nor is the occasional eating of grass by the sheep as they go, or while they stop for needed rest, "grazing" within the meaning of this statute. Phipps v. Grover (1904) 9 Ida. 415; 75 Pac. 64.

Same: Penalty.

Sec. 1218. The owner or the agents of such owner of sheep violating the provisions of the last section, on complaint of the party or parties injured before any justice of the peace for the precinct where either of the interested parties may reside, is liable to the party

injured for all damages sustained; and if the trespass be repeated, is liable to the party injured for the second and every subsequent offense in double the amount of damages sustained.

Historical: Rev. St. 1887, Sec. 1211. See 9 Ter. Ses. (1875) 110, Sec. 2.

Cited: Carter v. Wann (1899) 6 Ida. 556; 57 Pac. 314. Sifers v. Johnson (1901) 7 Ida. 798; 65 Pac. 709. Walling v. Brown (1903) 9 Ida. 184; 72 Pac. 960. Phipps v. Grover (1904) 9 Ida. 415; 75 Pac. 64. Walling v. Brown (1904) 9 Ida. 740; 76 Pac. 318. Spencer v. Morgan (1905) 10 Ida. 542; 79 Pac. 459. Walker v. Bacon (1905) 11 Ida. 127; 81 Pac. 155. Swanson v. Groat (1906) 12 Ida. 148; 85 Pac. 384. Bacon v. Walker (1907) 27 Sup. Ct. Rep. 289.

Jurisdiction of Actions: District Courts have concurrent original jurisdiction with justices' courts in actions under this section. Risse v. Collins (1906) 12 Ida. 689; 87 Pac. 1006.

Measure of Damages: The owner or herder of sheep who violates this sec-

tion is only liable for the damages which are caused in the commission of the trespass, and in estimating such damages the number of livestock which the settler has, depending on the pasturage upon the land, must be taken into consideration. Sweet v. Balientyne (1902) 8 Ida. 431; 69 Pac. 995.

The damages incurred by a violation of this section are measured by an entirely different standard, and are made up of different elements, and rest on a different theory from damages sustained by reason of sheep herding and grazing on the lands of the plaintiff. In the latter case, where a destruction of crops is claimed, the measure of damages is the value of the crops at the time of their destruction. Risse v. Collins (1906) 12 Ida. 689; 87 Pac. 1006.

Sheep Treated as Estrays.

Sec. 1219. When the owner or the agent of such owner of sheep found trespassing upon the land or possessory claims of another, or within two miles of the dwelling house of the clamant or occupant of such possessory claim, is unknown to the party injured by such trespass, all sheep so trespassing may be treated as estrays.

Historical: Rev. St. 1887, Sec. 1212. See 9 Ter. Ses. (1875) 110, Sec. 3.

Cited: Carter v. Wann (1899) 6 Ida.

556; 57 Pac. 314. Sifers v. Johnson (1901) 7 Ida. 798; 65 Pac. 709.

CHAPTER 6.

DOGS KILLING SHEEP OR GOATS.

Section

1220. Liability for sheep killed by dogs.

Liability for Sheep Killed by Dogs.

Sec. 1220. The owner, possessor, or harbinger of any dog or animal that kills, worries, or wounds any sheep, angora or cashmere goats, is liable to the owner of the same for the damages and costs of suit, to be recovered before any court of competent jurisdiction:

1. In the prosecution of actions under the provisions of this section it is not necessary for the plaintiff to show that the owner, possessor, or harbinger of such dog or other animal had knowledge of the fact that such dog or other animal would kill or wound sheep or goats;

2. Any person, on finding any dog, not on the premises of its owner or possessor, worrying, wounding, or killing any sheep, angora or cashmere goats, may, at the time of so finding said dog, kill the same, and the owner thereof can sustain no action for damages against any person so killing such dog.

Historical: Rev. St. 1887, Sec. 1205. See 4 Ter. Ses. (1867) 104, Sec. 4.

CHAPTER 7.

LIABILITIES OF STOCK RANCHERS.

Section

1221. Stock rancher defined.

1222. Duties and liability.

Section

1223. Forfeiture of fees.

Stock Rancher Defined.

Sec. 1221. Every person who, for a consideration, takes horses or other stock to keep and take care of by the day, week, month or year, is deemed a stock rancher.

Historical: Rev. St. 1887, Sec. 1230.
7 Ter. Ses. (1872) 58, Sec. 1.

Duties and Liability.

Sec. 1222. It is the duty of every stock rancher to use due diligence to prevent the death or loss of, or injury to, any animal in his charge as such rancher; and in case of death, loss or injury to such animal while in possession of a stock rancher, the owner thereof may recover, before any court of competent jurisdiction, the full amount of damages sustained, if it appears that such loss, death or injury was in consequence of the failure of the stock rancher to use due and reasonable diligence.

Historical: Rev. St. 1887, Sec. 1231.
7 Ter. Ses. (1872) 58, Sec. 2.

Forfeiture of Fees.

Sec. 1223. Any stock rancher using any animal placed in his charge, by riding or working the same in any manner whatever, unless there is an express contract between himself and the owner thereof, allowing such animal to be used, forfeits all claims or demands for ranch fees on such animal; and he is liable for any damages or injury to such animal by reason of such use.

Historical: Rev. St. 1887, Sec. 1232.
See 7 Ter. Ses. (1872) 58, Sec. 3.

CHAPTER 8.

MARKS AND BRANDS.

Article

1. Stockgrowers' brands.

2. Stockdrovers' brands.

3. Inspection of brands before shipment of livestock.

Article

4. Record of brands on slaughtered cattle.

5. Auctioneers' registers.

ARTICLE 1.

STOCK GROWERS' BRANDS.

Section

1224. Definitions.

1225. Stock growers must use brands.

1226. Sheep owners to use brands.

1227. Recorder of brands.

1228. Brands to be recorded.

1229. Manner of recording brands.

1230. Recording certified copy with county recorder

1231. Sales and transfers of brands.

Section.

1232. Conflicting brands.

1233. Brand book.

1234. Brand as evidence of ownership.

1235. Sheep owner to notify owner of strange sheep.

1236. Sale of branded animals.

1237. Partnership brands.

1238. Mutilating and counterfeiting brands.

Definitions.

Sec. 1224. Every person, association or corporation who owns any cattle, horses, mules, asses or sheep in this State, and is engaged in the business of breeding, growing or raising the same for profit or otherwise, is deemed a stock grower, and all cattle, horses, mules, asses and sheep are deemed livestock.

Historical: Laws 1905, 352, Sec. 1.

Stock Growers Must Use Brands.

Sec. 1225. Every stock grower in this State must use one, and only one, brand for cattle, one, and only one, brand for horses, mules and asses, which brand must be placed in a conspicuous place on the animal, and which must be designated in the application for the recording of the brand.

Historical: Laws 1905, 352, Sec. 2.

Sheep Owners to Use Brands.

Sec. 1226. Every sheep owner, who is a stock grower within the meaning of this article, must use one, and only one, brand for sheep which he shall record as herein provided. In addition to his recorded brand he may, for the purpose of distinguishing the sheep of one of his bands from the sheep of the other, use any one or more of the digits, except the digits 1 and 0, which herd brand shall not be recorded. Neither of the digits shall be used on sheep except as provided in this section.

Historical: Laws 1905, 352, Sec. 3.

Recorder of Brands.

Sec. 1227. The State Auditor is ex-officio State Recorder of Brands.

Historical: Laws 1905, 352, Sec. 4.

Brands to Be Recorded.

Sec. 1228. All brands shall be recorded with the State Recorder. No evidence of ownership of stock by brands or for the purpose of identification shall be permitted in any court of this State unless the brand shall have been recorded as provided in this article. All recorded sheep brands which were not recorded with the State Recorder on or before the first day of June, 1905, and all recorded brands of other livestock, which were not recorded with the State Recorder on or before the first day of October, 1905, shall be null and void.

Historical: Laws 1905, 352, Sec. 5. and parts of Secs. 6 and 7, which required all brands to be recorded within the time stated in the last sentence of this section, prescribed the manner of recording the same, the order of procedure in recording, and declared brands not recorded within the prescribed time to be void. As these sections relate only to acts which now

are, or which should have been, completed, they are omitted from these Codes, except as their present effect is preserved in the last sentence of this section.

Parol Evidence Inadmissible: Parol evidence is inadmissible to prove ownership of a stock brand. *State v. Dunn* (1907) 13 Ida.—; 88 Pac. 235.

Manner of Recording Brands.

Sec. 1229. Any stock grower whose brand is not recorded, desiring to use any brand on any stock, shall make and sign a certifi-

cate setting forth a fac-simile and description of the brand which he desires to use, and shall file the same with the State Recorder, who shall record the same in a book kept by him for that purpose, and from and after the filing of such certificate the stock grower filing the same shall have the exclusive right to use such brand within the State. Such stock grower upon filing such brand shall pay to the State Recorder for recording the same a fee of one dollar: *Provided*, That the State Recorder shall not file or record such brand if the same has already been filed or recorded by him in favor of some other stock grower.

Historical: Laws 1905, 352, Sec. 8. Omitting the last sentence, which provided that brands to be used on sheep should not be recorded until after June 1, 1905, and other stock brands should not be recorded until after October 1, 1905, and which is now

obsolete. "Who shall record" is inserted in lieu of "which marks shall record."

Cited: (Dis. op.) State v. Dunn (1907) 13 Ida. —; 88 Pac. 235.

Recording Certified Copy With County Recorder.

Sec. 1230. Upon the recording of any such brand with the State Recorder as herein provided, the owner thereof may procure from the State Recorder a certified copy of the record of such brand, paying therefor the sum of fifty cents, and may cause the same to be recorded in the office of the county recorder of the county or counties in which such owner purposes to range his stock upon which the brand is used or to be used. It shall be unlawful for any recorder of any county of this State to record any brand, unless the same is accompanied with a certificate from the State Recorder to the effect that the same has been recorded in the State brand book.

Historical: Laws 1905, 352, Secs. 9, 10. Omitting "after the passage of this act," in Section 10.

Sales and Transfers of Brands.

Sec. 1231. Any brand recorded in accordance with the requirements of this article, shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise, and descent, the same as personal property. Instruments of writing evidencing any such sale, assignment or transfer, may be acknowledged as deeds to real estate are now required to be, and may be recorded in the office of the county recorder where such brand is recorded, in a book to be by said officers respectively kept for that purpose, which shall be properly indexed. The recording of such instruments in each of said offices shall have the same force and effect, as to third parties, as the recording of instruments affecting real estate, and the acknowledgment of the same shall have the same force and effect as the acknowledgment of deeds to real estate, and certified copies of the record of any such instrument, duly acknowledged, may be introduced in evidence the same as is now provided for certified copies of instruments affecting real estate.

Historical: Laws 1905, 352, Sec. 11.

Conflicting Brands.

Sec. 1232. In deciding as to conflict of brands, the State Recorder

shall reject any brand being the same as one previously recorded in the same place on the animal; he shall also reject all brands known as solid brands and the window sash brand. A variation in the size of the letter, number or figure shall not constitute a new brand and shall be rejected. A combination of letters, numbers or figures may be permitted though the same letters, numbers or figures may have been recorded singly or together, if, in the judgment of the State Recorder, said combination is so different from any previous record as to constitute a new brand with no danger of infringement. Said recorder shall have the right to reject any brand that may in his judgment endanger infringement of the previously recorded brand.

Historical: Laws 1905, 352, Sec. 12.

Brand Book.

Sec. 1233. It shall be the duty of the State Recorder to publish a brand book in which shall be given a fac-simile or copy of all brands recorded in his office up to that time, together with the owner's name and the county and city wherein he resides; such names and brands shall be arranged in the most convenient form for reference; such book shall be bound in a good substantial manner that additional leaves may be added thereafter. One copy of such book shall be forwarded to the county recorder of each county, in whose office it shall be kept open for the inspection of all persons interested, and one to each livestock inspector within the State. It shall be the duty of the State Recorder, quarterly after the publication of a brand book, to furnish each county recorder and each inspector with a list of the brands and marks recorded in his office during the preceding three months, which list shall be printed in uniform style with the pages of such brand book, and shall be pasted in and become a part of such brand book when received by the county recorder and inspector of the respective counties. The State Recorder is authorized to publish, if he deem best to do so, a limited number of such brand books in addition to the number required by the provisions of this section, and to sell the same for such price as he may consider reasonable and proper, which price shall not be less than the actual cost of the same. The proceeds of the sale he shall turn over to the State Treasurer.

Historical: Laws 1905, 352, Sec. 13.
Omitting "on or before December first, 1905", from the first line.

Brand as Evidence of Ownership.

Sec. 1234. In all suits at law or in equity, or in any criminal proceedings when the title or right of possession is involved, the brand of any animal shall be prima facie evidence that the animal belongs to the owner or owners of the brand, and that such owner is entitled to the possession of the said animal at the time of the action: *Provided*, That such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified to by the State Recorder in accordance with the provisions of this article, or the original certificate issued to him by the State Recorder. Parol evidence shall be inadmissible to prove the ownership of a brand.

Historical: Laws 1905, 352, Sec. 14.

Application: The rule of evidence prescribed by this section applies to a case tried after the law went into effect, although the prior owner of the animal in controversy in such case, and of a brand found thereon, had parted to the title of such animal prior to the time when he was required by this act to record his brand. (Sullivan J., dissents.) *State v. Dunn* (1907) 13 Ida. —; 88 Pac. 235.

Construction: The production of

the original certificate of a stock brand issued by the State Recorder, or a certified copy of the record thereof, constitutes prima facie evidence of the ownership of the brand and of right of possession of the animals on which the same is found; parol evidence is inadmissible to prove ownership of such brand, and ownership of an animal the brand on which is unrecorded must be proved the same as if the animal was unbranded. *Ib.*

Sheep Owner to Notify Owner of Strange Sheep.

Sec. 1235. Every sheep owner who is a stock grower within the meaning of this article, who may at any time have sheep in his herd or herds, not his own, shall, within ten days, notify the owner of such sheep, if he is known, by registered letter addressed to him at his last known place of residence, describing said sheep by their marks and brands, and stating where said owner may find such herd, and when and where he can cut them out, and in case such owner is unknown, then said stock grower must, within ten days from the time of discovering said sheep in his herd or herds, send by registered letter to the county recorder of the county in which said herd at the time may be, a notice describing said sheep by marks and brands and number, as near as can be ascertained, and stating when and where the owner can find said herd, and when and where they can be cut out, together with the sum of one dollar for such recorder's services in sending notices to owner; and such recorder shall send a copy of such notice, by registered letter, to the stock grower who may be the owner of the recorded brand described in the notice, if such brand has been recorded. The stock grower giving such notice shall receive one dollar each for such notices sent, and repayment of one dollar paid to the recorder, and shall receive the sum of ten cents per head per month, or any part of the same, from the time of sending said notice, to be recovered from the owner of said estray sheep, for which said stock grower shall have a lien, and shall not be required to deliver said sheep to the owner until such sums shall be paid. No sheep owner shall shear or cause to be sheared any sheep not his own without the consent of the owner.

Historical: Laws 1905, 352, Sec. 15.

Sale of Branded Animals.

Sec. 1236. The owners of horses, mules, asses or cattle running at large upon any range in this State, may dispose of such animals by range delivery, while on the range and ungathered, by the sale and delivery of the recorded brands of such animals, but in every such case the purchaser, in order to record title to such animals, must have his conveyance or written transfer of such animals described by brand duly acknowledged by the vendor, and recorded in the office of the county recorder of the county in which the animals range, in a book kept for that purpose, and such sale or transfer shall be noted on the record of original brands in the office of the State Recorder.

Historical: Laws 1905, 352, Sec. 16.

Partnership Brands.

Sec. 1237. Partners in stock growing may adopt and use partnership brands or marks, in which case they must select, record and use the same in the manner provided for the individual stock growers, or they may adopt and use the individual brand or mark of any individual member of the partnership, duly selected and recorded as provided in this article.

Historical: Rev. St. 1887, Sec. 1177.
11 Ter. Ses. (1881) 295, Sec. 9.

Mutilating and Counterfeiting Brands.

Sec. 1238. No stock grower or other person in this State must change, conceal, deface, disfigure, or obliterate any brand or mark previously branded, impressed or marked on any head of livestock, or put his own, or any other brand upon or over any part of any brand previously branded upon any head of livestock, and no person must mark or use any counterfeit of any brand or mark provided for in this chapter. Any person violating any of the provisions of this section is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 1178.
(See 11 Ter. Ses. (1881) 295, Sec. 10.)
The penal sentence is taken from Section 1185, which declares persons violating any of the provisions of the

chapter of which this section was a part, guilty of a misdemeanor.
Cross Reference: Penalty for concealing or disfiguring marks and brands: Sec. 6879.

ARTICLE 2.

STOCK DROVERS' BRANDS.

Section	Section
1239. Stockdrover defined.	1243. Prevention of trespass of cattle.
1240. Road brand.	1244. Stock inspectors: Duties and compensation.
1241. Penalty for driving cattle from range.	1245. Penalty for violations.
1242. Same: Liability to civil action.	

Stock Drover Defined.

Sec. 1239. Every person, whether owner or employee, who drives or brings, or assists in driving or bringing, cattle, horses, mules, asses, sheep or hogs through or into this State, is deemed a stock drover.

Historical: Rev. St. 1887, Sec. 1170.
(11 Ter. Ses. 1881) 295, Sec. 1.)
First sentence of section, the remainder is repealed by Laws 1905, 352, embraced in the preceding article.

Road Brand.

Sec. 1240. It is the duty of every stock drover to select and use a road brand for all live stock driven or moved through or into this State by him or by his assistance or direction, which road brand must be plainly and distinctly branded on some conspicuous part of each animal; and it is the duty of every such stock drover or his assistants, each day to carefully search through and examine his herd or drove after driving or moving them over any portion of this State, and separate from and drive and keep away from his herd or drove all livestock not belonging thereto, and not branded with his road

brand: *Provided*, That any drover may drive the stock of other drovers with different brands; but he must have written authority from the owner to drive said stock.

Historical: Rev. St. 1887, Sec. 1180.
See 11 Ter. Ses. (1881) 295, Sec. 12.

Penalty for Driving Cattle From Range.

Sec. 1241. Any person, not being the owner or entitled to the possession of any head of livestock, who is found knowingly and wilfully driving, riding or leading, or assisting to drive, ride or lead, the same away from its usual range, unless he corrals the same at the first corral nearest to such range, is guilty of a misdemeanor. And proof that such person was found driving, riding or leading such livestock from its usual range, as aforesaid, is evidence sufficient to warrant a conviction, unless the evidence produced on the trial shows that the accused acted in good faith and with an innocent purpose: *Provided*, That any stock grower or his employees may drive any stock that he finds herding with any stock belonging to him or under his control on the range to the nearest suitable corral that can be obtained, and there separate it from the stock of said stock grower, and such stock must be by him driven or caused to be driven back to or near the range from which such stock was driven.

Historical: Rev. St. 1887, Sec. 1181.
11 Ter. Ses. (1881) 295, Sec. 13.

Cross Reference: Driving cattle
from range a misdemeanor: Sec. 6880.

Same: Liability to Civil Action.

Sec. 1242. Any stock drover or other person engaged in driving or moving any herd or drove of livestock through this State, who, without the owner's consent, drives or moves, or assists in driving or moving, any herd of livestock, the property of another person, away from its usual or accustomed range in this State, is guilty of a misdemeanor; and is also liable for damages in a civil action in any court of competent jurisdiction in this State by the party injured, for double the value of each head of livestock so as aforesaid driven or moved away, together with costs of suit; and the party injured may, at the commencement of such civil action, or during the pendency thereof, have such herd or drove of livestock, or such number of livestock thereof as are sufficient, attached, seized and held as security for all damages and costs that may be recovered in such action.

Historical: Rev. St. 1887, Sec. 1182.
11 Ter. Ses. (1881) 295, Sec. 14.

Cross Reference: Driving stock
from range a misdemeanor: Sec. 6881.

Prevention of Trespass of Cattle.

Sec. 1243. Any person owning or having charge of any herd or drove of livestock, who drives or moves the same into or through any county in this State, in which the owner thereof is not a resident or land owner, and where the land is owned or is occupied and improved, must prevent such herd or drove from mixing with the livestock belonging in said county, and must also prevent such herd or drove from trespassing on land in the possession of any actual settler, and used by him for grazing purposes, or for the growing of grain, hay or other crops, or injuring any ditches owned or used

by such settler. If any owner or person in charge of any such herd or drove of livestock wilfully or negligently injures any resident of this State by driving or moving such herd or drove of livestock from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same, he is guilty of a misdemeanor; and is also liable in a civil action to the party injured for the damages by him sustained.

Historical: Rev. St. 1887, Sec. 1183.
11 Ter. Ses. (1881) 295, Sec. 15.

Cross Reference: Driving stock

from public highway and herding the same on occupied land a misdemeanor: Sec. 6882.

Stock Inspectors: Duties and Compensation.

Sec. 1244. The county commissioners of any county in this State must, upon petition of five of the resident stock owners of said county, appoint one or more inspectors; said inspectors must be experienced stock men, and duly sworn to faithfully perform the duties and requirements of this article, whose duty it is to discover and detect any violation of this article, or of any law of this State relating to livestock. Said inspector or inspectors have full power to cut out and separate from any herd or drove of livestock, all range stock of every description not belonging to such herd or drove, and to detain the herd or drove for that purpose, and have full power, without a warrant, to arrest any person or persons violating any of the provisions of this article, and take them before any court having jurisdiction of the offense. They may receive such compensation for their services as are allowed by the board of county commissioners of such county, to be paid out of the county treasury. Any board of county commissioners in this State may offer and provide for the payment of suitable rewards for the detection of any violation of this article.

Historical: Rev. St. 1887, Sec. 1184.
11 Ter. Ses. (1881) 295, Sec. 16.

Penalty for Violations.

Sec. 1245. Any person violating any of the provisions of this article is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 1185.
See 11 Ter. Ses. (1881) 295, Sec. 17.

Cross Reference: Offenses in general: Secs. 6879-6883.

ARTICLE 3.

INSPECTION OF BRANDS BEFORE SHIPMENT OF LIVESTOCK.

Section	Section
1246. Constable to inspect brands before shipment.	1251. Unlawful to drive animals from accustomed ranges.
1247. Certificate of constable.	1252. Brand book open to public.
1248. Fees of constable.	1253. Unlawful to ship animals without owner's authorization.
1249. Driving animals from State: Inspection of brands.	1254. Penalty for failure of officers to perform duty.
1250. Justice of the peace to perform duties of constable.	

Constable to Inspect Brands Before Shipment.

Sec. 1246. Every owner or shipper of cattle, horses, mules or asses, desiring to ship the same from this State, shall before doing so give notice to the constable of the precinct in which the same are

to be loaded, stating the time when, and the point where he expects to load the same, and said constable shall thereupon go to the shipping point and examine carefully the said animals for brands and marks, and shall make an accurate record of the name of the shipper, name and residence of consignee, marks and brands found on said animals, and number and kind and sex of animals, in a book to be kept for that purpose, and if any of said animals are found to be branded with a brand not owned by the said shipper, he shall be required to produce a bill of sale of said animals, from the owner of the recorded brand, or give other evidence of his ownership satisfactory to said constable, before he shall be permitted to ship the same. In case there are any animals in said shipment branded by any other brand than that owned by the shipper, said officer shall thereupon notify the owner of the recorded brand, describing said animals, and the name and residence of the proposed shipper.

Historical: Laws 1905, 369, Sec. 1.

Certificate of Constable.

Sec. 1247. In case the constable finds, after a careful examination, that the said animals are owned by the shipper, or that he is authorized to ship the same, he shall issue a certificate stating the number of animals to be shipped, and give a duplicate thereof to the railroad company. It shall be unlawful for any common carrier to transport the said animals or any of them out of the State without receiving said certificate, and any common carrier who violates the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five hundred dollars nor more than five thousand dollars, and shall be responsible in damages to any person injured, in treble the damages, costs and attorneys' fees.

Historical: Laws 1905, 369, Sec. 2.

Fees of Constable.

Sec. 1248. The constable shall receive from said shipper for such inspection the sum of one dollar per car for each car so inspected, but not exceeding five dollars from any one shipper, for any one shipment.

Historical 1905, 369, Sec. 3

Driving Animals From State: Inspection of Brands.

Sec. 1249. Any one desiring to remove or drive any horses, mules or cattle from the boundaries of this State by any means other than by rail, shall, before doing so, apply to the constable within the precinct bordering on such State to which said animals are to be driven, to inspect the same for brands and marks, and on such application (or without said application if said constable have knowledge of such removal) the constable of said precinct shall immediately inspect said animals for brands and marks, and keep an accurate record of the same with name and residence of owner or shipper, and name, sex and kind of animals. For said inspection he shall receive the sum of five dollars per day and mileage at the rate of ten cents per mile, from the owner or shipper. If said constable find that the

animals have brands that are not owned by the person claiming the same, then such person shall be required to produce a bill of sale or other satisfactory evidence of ownership. Upon such proof he shall give the person a certificate stating the number and kind of animals and their marks and brands, and thereupon the said person shall be permitted to drive said animals from this State. But otherwise he shall not be so permitted, and in case said person shall, without said certificate, drive the same from this State, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding six months, or be punished by both such fine and imprisonment.

Historical: Laws 1905, 369, Sec. 4.
"Or" inserted for "and" "be imprisoned," etc. The concluding line indi-

cates that an alternative punishment was intended. "Be punished" inserted in the last line to complete the sense.

Justice of the Peace to Perform Duties of Constable.

Sec. 1250. If no constable can be found in the precinct, then the justice of the peace shall perform all the duties of the constable, and his acts shall have the same force and effect as if said constable had performed them.

Historical: Laws 1905, 369, Sec. 5.

Unlawful to Drive Animals From Accustomed Ranges.

Sec. 1251. It shall be unlawful for any person to drive or cause to be driven any cattle, mules, horses or asses from their accustomed ranges without consent of the owner, and any person violating the provisions of this section shall be guilty of a misdemeanor.

Historical: Laws 1905, 369, Sec. 6.

Brand Book Open to Public.

Sec. 1252. The brand book kept by said constable or justice of the peace, as the case may be, shall open to the inspection of the public, and shall be prima facie evidence of the facts recited therein, in any of the courts of this State.

Historical: Laws 1905, 369, Sec. 7.

Unlawful to Ship Animals Without Owner's Authorization.

Sec. 1253. Any person who knowingly offers for shipment any animals herein enumerated, not his own, or without the authority of the owner, shall be deemed guilty of a misdemeanor.

Historical: Laws 1905, 369, Sec. 8.

Penalty for Failure of Officers to Perform Duty.

Sec. 1254. If the constable or justice of the peace shall wilfully or negligently fail to perform any of the duties herein devolved upon him, he shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months, or be punished by both such fine and imprisonment.

Historical: Laws 1905, 369, Sec. 9.
"Be punished" inserted before "by both," etc., to complete the sense.

ARTICLE 4.

RECORD OF BRANDS ON SLAUGHTERED CATTLE.

Section	Section
1255. Record of slaughtered cattle.	1257. Penalty for violations.
1256. Preservation of hide.	

Record of Slaughtered Cattle.

Sec. 1255. Any persons engaged in the business of slaughtering cattle, must keep at their place of business a book in which they must enter daily the number and class of cattle slaughtered, the name of the person or persons from whom said cattle were purchased, and the marks and brands of such cattle. Said book must be kept ready at all times for the inspection of any person who may desire to examine the same.

Historical: Rev. St. 1887, Sec. 1195.
9 Ter. Ses. (1877) 36, Sec. 1.

Preservation of Hide.

Sec. 1256. Any person not regularly engaged in the business of slaughtering cattle, who at any time slaughters any cattle, must retain in his possession the hide taken off said cattle with the ears attached thereto without any alteration of the marks on the same, or any disfiguration of the brand, for the period of thirty days, and any owner of cattle may, within the period of time herein mentioned, demand an exhibition of the hide or hides of any cattle so killed or slaughtered by the person so killing the same, or by any other person for whose use and benefit such animal or animals were killed, and upon such demand being made he must produce said hide or hides for inspection.

Historical: Rev. St. 1887, Sec. 1196. 9 Ter. Ses. (1877) 36, Sec. 2.	Code 1872, Sec. 3185; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: See Pol.	

Penalty for Violations.

Sec. 1257. Any person violating any of the provisions of this article, or who may destroy the hide of any cattle slaughtered within thirty days from the slaughtering thereof, is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 1197. See 9 Ter. Ses. (1877) 36, Sec. 3.	Cross Reference: Similar provision: Sec. 6884.
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ARTICLE 5.

AUCTIONEERS' REGISTERS.

Section	Section
1258. Auctioneer to keep register.	1261. Register deposited with recorder.
1259. Record of animals sold.	1262. Penalty for non-compliance.
1260. Inspection of register.	

Auctioneers to Keep Register.

Sec. 1258. Every person who is licensed, under the laws of this State, to sell livestock or other goods and wares, must keep in his office a book for the purpose of registering a description of each animal that he may sell, to be called the Auctioneer's Register Book of stock sold.

Historical: Rev. St. 1887, Sec. 1275.
13 Ter. Ses. (1885) 32, Sec. 1.

Record of Animals Sold.

Sec. 1259. Every auctioneer before selling any animal, must take down in ink, on the register book provided for in the preceding section, a correct description of each animal he is about to sell, the color, age, mark and brand as near as practicable; also the date and name and residence of the owner of said animal, and, when sold, add to said description the name and residence of the purchaser.

Historical: Rev. St. 1887, Sec. 1276.
13 Ter. Ses. (1885) 32, Sec. 2.

Inspection of Register.

Sec. 1260. Every auctioneer's register book of stock sales must, upon application by any county or State officer, or any stock grower of the county, be open for his inspection.

Historical: Rev. St. 1887, Sec. 1277.
See 13 Ter. Ses. (1885) 32, Sec. 3.

Register Deposited With Recorder.

Sec. 1261. Any Auctioneer who discontinues the business of selling livestock or removes from the county, must deliver to the recorder of said county all of his register books of livestock sold. The recorder must keep said register in his office for the inspection of any citizen of the county or State.

Historical: Rev. St. 1887, Sec. 1278.
13 Ter. Ses. (1885) 32, Sec. 5.

Penalty for Non-Compliance.

Sec. 1262. Any auctioneer failing to comply with the provisions of this article is guilty of a misdemeanor.

Historical: Rev. St. 1887, Sec. 1279.
See 13 Ter. Ses. (1885) 32, Sec. 6.

Cross Reference: Similar provision:
Sec. 6887.

CHAPTER 9.

LEASES OF LIVESTOCK.

Section

1263. Leases to be in writing and recorded.

Leases to Be in Writing and Recorded.

Sec. 1263. All leases of more than ten head of live stock must be in writing and must be acknowledged in like manner as grants of real property, and filed of record in the same county recorder's office or offices, and within the same time and manner, and for the same fee, as are chattel mortgages; and the failure to comply with the provisions of this section renders the interest of the lessor in the property subject and subsequent to the claims of creditors of the lessee, and of subsequent purchasers and incumbrances of the property in good faith and for value.

Historical: Laws 1907, 481, Sec. 1.

INCLOSURES, TRESPASS OF ANIMALS AND ESTRAYS.
CHAPTER 10.
FENCES.

Section	Section
1264. Lawful fences in general.	1270. Prohibition against removal.
1265. Lawful fences described.	1271. Removal of fence built by mistake.
1266. Erection of partition fences.	1272. Same: Restrictions on occupant.
1267. Care of fences by adjoining owners.	1273. Same: Survey of line.
1268. Use of division fence in making inclosure.	1274. Removal of partition fence.
1269. Disagreement between owners: Viewers.	1275. Establishment of gates.

Lawful Fences in General..

Sec. 1264. A lawful fence, except as hereinafter provided, must be not less than four and a half feet high, and the bottom board, rail, poll or wire must not be more than twenty inches above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.

Historical: Rev. St. 1887, Sec. 1300.

Lawful Fences Described.

- Sec. 1265. Lawful fences are described as follows:
1. If made of stone, four feet high, two feet base, and one foot thick on top.
 2. If it be a worm fence, the rails must be well laid and at least four feet high.
 3. If made of posts, with boards, rails or poles, the posts must be well set in the ground and not more than eight feet apart, with not less than three six-inch boards, or rails, or poles not less than two and one-half inches in diameter at the small end; if four poles are used, they must not be less than two inches in diameter at the small end. The top board, rail, or pole must not be less than four feet from the ground, the spaces well divided, and the boards, rails or poles securely fastened to the posts; if poles not less than three inches in diameter at the small end are used, the posts may be set twelve feet apart.
 4. If wire be used in the construction of fences, the posts must not be more than twenty-four feet apart, set substantially in the ground, and three substantial stays must be placed at equal distances between the posts, and all wires must be securely fastened to each post and stay with not less than three barbed wires, or four coiled spring wires of not less than No. 9 gauge. The bottom wire shall be not more than twenty-one inches from the ground, and the other wires a proper distance apart. The wires must be well stretched and the fence not less than forty-seven inches high. If all woven wire fencing is used, the top and bottom wire must not be less than No. 9 gauge, or two No. 13 gauge wire twisted together, with intermediate bars not less than twelve inches apart and of not less than No. 14 gauge wire, and the stay wires not more than twelve inches apart, and the top wire not less than forty-seven inches from

the ground. If woven wire less in height is used, it must be brought to the height of forty-seven inches by additional barbed wires, or coiled spring wire of not less than No. 9 gauge, and not more than twelve inches between the wires: *Provided*, That if barbed wire only is used, and the posts are not more than sixteen feet apart, no stays need be used.

5. If made in whole or in part of brush, ditch pickets, hedge, or any other materials, the fence, to be lawful must be equal in strength and capacity to turn stock, to the fence above described.

6. All fences in good repair, of suitable material, and of every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains, that present a suitable obstruction to stock are deemed lawful fences.

Historical: Rev. St. 1887, Sec. 1301;
amended Laws 1901, 207, Sec. 1;
amended Laws 1907, 132, Sec. 1.

Erection of Partition Fences.

Sec. 1266. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the rights and interests of one party that a partition fence be made between them, the other or others, when notified, must proceed to erect, or cause to be erected, one-half of such partition fence; said fence to be erected on, or as near as practicable to, the line of said land. And if, after notice given in writing, either party fails to erect and complete, within six months time thereafter, one-half of such fence, the party giving the notice may proceed to erect the entire partition fence and collect by law one-half of the costs of such fence from the other party, and he has a lien upon the land thus partitioned.

Historical: Rev. St. 1887, Sec. 1302.
See 13 Ter. Ses. (1885) 118, Sec. 1.

Care of Fences by Adjoining Owners.

Sec. 1267. Each adjoining land owner, unless both otherwise agree, or unless other arrangements have heretofore been made, must construct and keep in repair that half of the line fence between their respective tracts of land which is to his left when he is standing on his own land facing the other; unless the owner of one of said tracts choose to allow his land to be uninclosed: *Provided*, That one party may, for his own convenience, strengthen, or render hog-tight, the whole or any part of said fence by stretching one or more additional wires thereon or otherwise; in which event the other shall not be liable for his proportion of the additional cost; but, *Provided, further*, If one of the parties shall render such fence hog-tight and the other shall at any time use his field for the pasture of hogs, sheep or goats, without a herder, such other shall become liable as a joint user or owner, and shall, upon demand of the party building the hog-tight fence, pay his just proportion thereof. In case viewers are appointed, as provided in Section 1269, the report of such viewers must be in conformity with this section.

Historical: Rev. St. 1887, Sec. 1303.
(See 13 Ter. Ses. (1885) 118, Sec. 1);
amended Laws 1907, 133, Sec. 2.

Use of Division Fence in Making Inclosure.

Sec. 1268. When one of such adjoining proprietors has allowed his land to lie uninclosed, and afterwards incloses it, he owes and is indebted to such adjoining owner one-half the value of any division fence owned by the other, used by him in forming such inclosure; and each must thereafter keep one-half of such fence in repair.

Historical: Rev. St. 1887, Sec. 1304.
See 13 Ter. Ses. (1885) 118, Sec. 1.

Disagreement Between Owners: Viewers.

Sec. 1269. If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five days' notice, to a justice of the peace of the township, if there be one, if not, to the probate judge, for the appointment of three viewers who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one proprietor, how much the other must pay as his proportion of the value;

2. If the fence or the whole thereof is not built, which part thereof must afterwards be built and kept in repair by each.

The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one party is to pay the other a proportion also fixed, such proportion must be paid within thirty days after notice of such determination, and if not so paid, may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars each, one-half to be paid by each proprietor.

Historical: Rev. St. 1887, Sec. 1305.
See 13 Ter. Ses. (1885) 118, Sec. 1.

Prohibition Against Removal.

Sec. 1270 When one party ceases to improve his land, or open his inclosure, he must not take away any part of the partition fence belonging to him and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two months after the same is ascertained, pay therefor such sum as is agreed upon by the parties, or, if failing to agree, then such sum as may be adjudged by viewers as provided in the last section; nor must such partition fence be removed when by so doing it will expose to destruction any crops in such inclosures.

Historical: Rev. St. 1887, Sec. 1306.
13 Ter. Ses. (1885) 118, Sec. 4.

Removal of Fence Built by Mistake.

Sec. 1271. When any person has built by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one year from the time of discovering such fence, doing no unnecessary damage thereby.

Historical: Rev. St. 1887, Sec. 1307.
13 Ter. Ses. (1885) 118, Sec. 5.

Same: Restrictions on Occupant.

Sec. 1272. The occupant or owner of land whereon a fence has been built by mistake, must not throw down or in any manner disturb such fence during the period which the person who built it is authorized by the last section to remove it, when by so doing he will expose any crop to destruction.

Historical: Rev. St. 1887, Sec. 1308.
See 13 Ter. Ses. (1885) 118, Sec. 6.

Same: Survey of Line.

Sec. 1273. The person building such fence, or the occupant or owner of the land whereon the same is built, may, upon notice to the other party, whenever doubts arise about the location of such fence, require the surveyor of the county to run the division line between their respective lands, and the line so run is sufficient notice to the party making the mistake, so as to require him to remove such fence within one year thereafter.

Historical: Rev. St. 1887, Sec. 1309.
13 Ter. Ses. (1885) 118, Sec. 7.

Removal of Partition Fence.

Sec. 1274. In all cases where the inclosures of two or more persons are divided by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such inclosure, or to make a lane of passage between such adjoining inclosures, such person is at liberty to remove his share or part of such partition fence, on giving six months' notice in writing of such intention to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county.

Historical: Rev. St. 1887, Sec. 1310.
13 Ter. Ses. (1885) 118, Sec. 8.

Establishment of Gates.

Sec. 1275. In all cases where a partition fence exists between parties, and a gate is established for passage through their lands, any other person may pass through such gate free, doing no unnecessary damage, and if such person leave any such gate open, or does other damage to the premises, he is liable to the party aggrieved in double damages.

Historical: Rev. St. 1887, Sec. 1311.
13 Ter. Ses. (1885) 118, Sec. 9.

CHAPTER 11.

INCLOSURES OF RESERVOIRS AND DUMPS.

Section 1276. Reservoirs and dumps to be inclosed.	Section 1277. Liability for failure to inclose.
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Reservoirs and Dumps to Be Inclosed.

Sec. 1276. The owner or operator of any quartz mill must inclose with a good and substantial fence, sufficient to turn stock, all reser-

voirs and dumps or other material, known to contain that which is injurious to the health of stock.

Historical: Rev. St. 1887, Sec. 1335.
See 7 Ter. Ses. (1873) 61, Sec. 1.

Liability for Failure to Inclose.

Sec. 1277. Every person who fails to comply with the provisions of the last section is liable to the owner of any stock injured by drinking the water or acids that flow from such mill, in twice the damage sustained.

Historical: Rev. St. 1887, Sec. 1336.
See 7 Ter. Ses. (1873) 61, Sec. 2.

CHAPTER 12.

ANIMALS RUNNING AT LARGE AND TRESPASSING.

Article	Article
1. Hog trespass.	3. Animals running at large in towns.
2. Stallions running at large.	4. Trespass of animals.

**ARTICLE 1.
HOG TRESPASS.**

Section	Section
1278. Hogs need not be fenced against.	1281. Arbitration of damages.
1279. Taking up trespassing hogs.	1282. Failure of owner to appear.
1280. Notice of taking up.	1283. Hogs running at large within towns.

Hogs Need Not Be Fenced Against.

Sec. 1278. The owner or occupant of premises is not required to fence against hogs.

Historical: Rev. St. 1887, Sec. 1340.	police power of the State and constitutional. <i>Sifers v. Johnson</i> (1901) 7 Ida. 798; 65 Pac. 709.
Constitutionality: The regulations provided for in this and the following sections are a valid exercise of the	

Taking Up Trespassing Hogs.

Sec. 1279. If any hog is found trespassing, the occupant or proprietor of the premises may take up and safely keep, at the expense of the owner thereof, such hog, and hold the same until the payment of the expense and damages by the owner, and shall be allowed fifty cents per head additional for each animal so taken up.

Historical: Rev. St. 1887, Sec. 1341 (see 11 Ter. Ses. (1881) 434, Sec. 1); amended act 15 Ter. Ses. (Laws 1888-89) 42, Sec. 1.	Cited: <i>Sifers v. Johnson</i> (1901) 7 Ida. 798; 65 Pac. 709.
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Notice of Taking Up.

Sec. 1280. Any person taking up a hog under this article, must immediately thereafter write out three notices in a plain, legible hand, giving a correct description thereof with the marks and brands, if any, on said hog, and the time and place of taking up, and at once post up said notices in a good and substantial manner in three conspicuous places in the precinct in which said hog was taken up.

Historical: Rev. St. 1887, Sec. 1342.
See 11 Ter. Ses. (1881) 434, Sec. 2.

Cited: Sifers v. Johnson (1901) 7
Ida. 798; 65 Pac. 709.

Arbitration of Damages.

Sec. 1281. If the owner and taker-up of such hog cannot agree as to the amount of damage, they must each select a disinterested person, residing in the precinct where such trespass has been committed, who must, after first hearing all the facts in the case from both parties interested, fix the amount of damages, if any, to be paid, and the same are a lien upon said hog and other personal property of the owner, not exempt by law, and if said amount is not paid within five days, together with costs of keeping said hog, the taker-up must notify the constable of the precinct whose duty it is to levy upon the hog and a sufficient amount of other personal property of the owner not exempt by law, as shall pay all damages and costs, and shall sell at public auction on the premises where the said hog was taken up, after first giving five days' notice of such sale, in the manner prescribed in the last section, and must be applied, first, to the payment of the constable's fees, which are the same as on execution; second, the payment of the award, and subsequent charges for keeping, to the taker-up of such hog, and the remainder, if any, must be paid to the owner of such hog: *Provided*, That either party feeling aggrieved by the award may appeal to any justices' or probate court within the county, within five days after said award, and the party so appealing must file a good and sufficient bond for the payment of all costs and expenses arising from said appeal.

Historical: Rev. St. 1887, Sec. 1343;
(See 11 Ter. Ses. (1881) 434, Sec. 3);
amended act 15th Ter. Ses. (Laws
1888-89) 42.

Cited: Sifers v. Johnson (1901) 7
Ida. 798; 65 Pac. 709.

Failure of Owner to Appear.

Sec. 1282. If the owner or person entitled to the possession of such hog does not appear and substantiate his title thereto, and pay the charges thereon within thirty days after the notice has been given, as above provided, the absolute ownership of such hog shall be vested in the person taking up such hog: *Provided*, He shall keep a copy of the notices posted, as prescribed by this article, which shall have indorsed thereon the date and manner of posting and the places where posted, which shall have the same force and effect as a bill of sale of such hog.

Historical: Rev. St. 1887, Sec. 1344
(see 11 Ter. Ses. (1881) 434, Sec. 4);
amended act 15th Ter. Ses. (Laws
1888-89) 42.

Cited: Sifers v. Johnson (1901) 7
Ida. 798; 65 Pac. 709.

Hogs Running at Large Within Towns.

Sec. 1283. It shall be the duty of any constable or peace officer in any platted and recorded town, upon the complaint of any citizen thereof, to take up and impound all hogs found running at large within the limits of said town. He shall keep and dispose of all hogs so taken up in the manner prescribed by this article.

Historical: Rev. St. 1887, Sec. 1345;
amended act 15th Ter. Ses. (Laws
1888-89) 42.

ARTICLE 2.

STALLIONS RUNNING AT LARGE.

Section	Section
1284. Prohibition against stallions running at large.	1286. Stallion may be taken up.
1285. Penalty for violation.	1287. Same: Notice and sale.

Prohibition Against Stallions Running at Large.

Sec. 1284. The owner of any stallion over the age of eighteen months must not allow the same to run at large, unless it is of the market cash value of two hundred and fifty dollars, or more, and is at such value assessed.

Historical: Rev. St. 1887, Sec. 1240 (see 5 Ter. Ses. (1869) 127, Sec. 1.); amended Laws 1899, 26, Sec. 1; re-enacting Laws 1890-91, 48, Sec. 1.	not preclude the owner from recovering damages for the death of the stallion caused by its getting on the track of a railroad at a place where the railroad has unlawfully failed to fence. <i>Patrie v. Oregon Short Line Ry.</i> (1899) 6 Ida. 448; 56 Pac. 82.
Death of Stallion—Liability: The fact that a stallion has escaped from the inclosed pasture of its owner does	

Penalty for Violation.

Sec. 1285. If any stallion of less than two hundred and fifty dollars market cash and assessed value, ridgling, or any unaltered male mule or jackass over the age of eighteen months be found running at large, the owner must be fined for the first offense twenty dollars, and for each subsequent offense not more than one hundred dollars nor less than forty dollars, to be recovered before a justice of the peace in the name of any person who will prosecute the same, one-half to his own use and the other half to the use of the county school fund.

Historical: Rev. St. 1887, Sec. 1241 (see 5 Ter. Ses. (1869) 127, Sec. 2);	amended Laws 1899, 26, Sec. 2; re-enacting Laws 1890-91, 48, Sec. 2.
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Stallion May Be Taken Up.

Sec. 1286. Any person may take up and safely keep any such stallion, mule, ridgling or jackass found running at large or in his inclosures; and, when so found, must give the owner thereof five days' notice that such animal is in his possession; and if, at the expiration of the aforesaid time, the owner neglects to remove such animal and pay all reasonable charges for keeping the same, then the taker-up must notify the sheriff or any constable, whose duty it is to sell such animal at public auction, on the premises where taken up, after first giving five days' notice of such sale; and the proceeds of such sale must be applied, first, to the fees of the officer making such sale, which are the same as on execution; second, to the payment of the charges of the taker-up of such animal: and the remainder, if there be any, must be paid to the owner of such animal.

Historical: Rev. St. 1887, Sec. 1242 (see 5 Ter. Ses. (1869) 127, Sec. 3; amended Laws 1899, 26, Sec. 3; re-enacting Laws 1890-91, 48, Sec. 3.	"Fees of the" inserted before "officer making such sale," to complete the sense.
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Same: Notice and Sale.

Sec. 1287. If the owner or claimant of any stallion, ridgling, unaltered male mule or jackass be unknown, the taker-up must give ten days' notice, with the description of the animal or animals, its

marks or brands, by posting up at least three written or printed notices in at least three conspicuous places in the county, calling upon the owner to claim the property; and if, at the expiration of the ten days, the owner neglects to remove such animal or animals and pay all costs, then the taker-up shall call on the sheriff or any constable of the county to sell such animal or animals; and after deducting the fees of the officer making such sale and the reasonable charges of the taker-up, the balance, if any there be, shall be paid into the county treasury, to be applied to the county school fund.

Historical: Rev. St. 1887, Sec. 1243 | amended Laws 1899, 26, Sec. 4;
(see 5 Ter. Ses. (1869) 127, Sec. 4); | re-enacting Laws 1890-91, 48, Sec. 4.

ARTICLE 3.

ANIMALS RUNNING AT LARGE IN TOWNS.

Section	Section
1288. Unlawful to range stock in towns.	1289. Same: Penalty.
	1290. Duties of officers.

Unlawful to Range Stock in Towns.

Sec. 1288. It shall be unlawful for any person or persons owning livestock, or the agent or employee of such person or persons, to allow any cattle, horses, sheep or hogs to range or graze within the platted limits of any incorporated town or village of more than five hundred inhabitants, between the first day of September and the first day of April, without a herder.

Historical: Laws 1901, 158, Sec. 1.

Same: Penalty.

Sec. 1289. Any person or persons, or the agent or employee of such person or persons, violating the provisions of the last section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum of not less than five nor more than twenty-five dollars.

Historical: Laws 1901, 158, Sec. 2.

Duties of Officers.

Sec. 1290. It is hereby made the duty of any sheriff, deputy sheriff, or constable, to complain against and prosecute any person or persons violating the above sections.

Historical: Laws 1901, 158, Sec. 3.

ARTICLE 4.

TRESPASS OF ANIMALS.

Section	Section
1291. Liens on trespassing stock.	1296. Execution and sale.
1292. Same: Recovery of damages.	1297. Same: Disposition of surplus money.
1293. Animal may be taken up.	1298. Appeals: Proceedings in District Court.
1294. Proceedings for assessment of damages.	
1295. Same: Compensation of viewers.	

Liens on Trespassing Stock.

Sec. 1291. Any person having any inclosure in conformity with

the provisions of Chapter 10 of this title is deemed to possess a lawful inclosure, and if any horses, mules, jacks, jennies, cattle, hogs or sheep break into such inclosure, the party injured has a lien upon such animals until he is recompensed for all damages committed by said animals: *Provided*, That persons owning or occupying any lands which are inclosed by any water course or natural embankment, or hill, or any cliff or rocks, may have the same examined by viewers as is provided in this chapter, and if such appraisers report the same a sufficient inclosure, it must be deemed a lawful inclosure.

Historical: Rev. St. 1887, Sec. 1320. See 4 Ter. Ses. (1867) 80, Sec. 9. Omitting the words "attorney or" before "party injured." The act of the 4th session gave a lien to "the owner, his agent, attorney or lessee, or other party injured," but such an interpolation is unwarranted in this section

and the word "attorney," standing by itself, is meaningless.

Sheep and Swine: A land owner is not required to fence against sheep and swine. *Spencer v. Morgan* (1905) 10 Ida. 542; 79 Pac. 459.

Same: Recovery of Damages.

Sec. 1292. If any animal before mentioned breaks into any inclosure or through any fence conforming to the requirements of Chapter 10, the owner of such animal must, for such trespass, pay to the party injured the full amount of damage he has sustained by reason of such trespass, to be recovered with costs in any court having jurisdiction.

Historical: Rev. St. 1887, Sec. 1321. See 4 Ter. Ses. (1867) 80, Sec. 10.

Animal May Be Taken Up.

Sec. 1293. The party injured may take up any animal breaking into such inclosure, and keep the same at the expense of the owner, and the said taker-up has a lien upon such animal for damages, costs and expenses; but the owner may at any time pay charges, costs and expenses and take such animal.

Historical: Rev. St. 1887, Sec. 1322. 4 Ter. Ses. (1867) 80, Sec. 11.

Proceedings for Assessment of Damages.

Sec. 1294. Upon complaint of the party injured, to any justice of the peace in the county in which such trespass is alleged to have been committed, said justice must issue a summons, as in civil actions against the owner of said property as defendant; if not known he may be designated in said summons by a fictitious name; upon the return of said summons, if personally served, proceedings must be had as in civil actions; if the summons be not personally served in consequence of such defendant not being found in the county, then the said justice must forthwith issue an order requiring three disinterested freeholders of the precinct named therein not related to the parties, to forthwith view the fence where the trespass is alleged to have been committed, and to appear at the time mentioned in said order, before said justice and give evidence thereof; and upon such hearing, if said justice finds that said fence was lawful and sufficient, he must proceed to assess the damages accruing in consequence of said trespass, and render judgment therefor, together with costs, as in other actions; such judgment only binds said property.

Historical: Rev. St. 1887, Sec. 1323.
See 4 Ter. Ses. (1867), 80, Sec. 12.

Same: Compensation of Viewers.

Sec. 1295. The viewers appointed are entitled each to the sum of three dollars for their services, and fifty cents each for every mile necessarily traveled by them, which must be taxed as costs in said proceedings.

Historical: Rev. St. 1887, Sec. 1324.
4 Ter. Ses. (1867) 80, Sec. 13.

Execution and Sale.

Sec. 1296. Upon the judgment, the justice must issue execution particularly describing said property, and directing a sale thereof for the satisfaction of said judgment and costs; and the officer to whom the same is delivered for service, must thereupon post notices in three conspicuous and public places in said precinct, which notices must contain a particular description of said property, and specify a time and place of sale thereof, as in notice of sale on execution. The justice, constable or sheriff may receive the same fees as for like services in a civil action. At any time before said sale the owner may redeem said property from said lien, upon paying the costs and judgment, when rendered, or amount of said claim and costs.

Historical: Rev. St. 1887, Sec. 1325.
4 Ter. Ses. (1867) 80, Sec. 14.

Same: Disposition of Surplus Money.

Sec. 1297. Upon the sale of any property as provided in this chapter, and after the payment of all damages, expenses and costs, the overplus, if any there be, must be paid over to the justice, and if not demanded by the owner of said property within ninety days from the date of said sale, seventy-five per cent thereof must be paid by said justice into the county treasury for the benefit of the common school fund, and twenty-five per cent, the balance thereof, to the person taking and impounding said animal as compensation for his services.

Historical: Rev. St. 1887, Sec. 1326.
4 Ter. Ses. (1867) 80, Sec. 16.

Appeals: Proceedings in District Court.

Sec. 1298. Nothing in this chapter contained prevents appeals as in civil cases. If in any case the amount of such damages equals or exceeds three hundred dollars, proceedings to sell said property may be had in the District Court.

Historical: Rev. St. 1887, Sec. 1327.
See 4 Ter. Ses. (1867) 80, Sec. 17.

Cross Reference: Appeals to District Court: Secs. 4838-4844.

CHAPTER 13.

ESTRAYS.

Section
1299. Taking up estrays.
1300. Owner to recover proceeds.

Section
1301. Neglect of constable.

Note: The estray law has been amended by practically every session of the Legislature for the last ten years. The subject was treated in Title 9 of the Political Code of the Revised Statutes, which was amended by Laws 1897, 76; Laws 1899, 305; ib. 397; Laws 1901, 88; Laws 1903, 212. The act of 1905, contained in this chapter, was evidently intended to cover the whole subject and to supersede all prior legislation. The first section of this law was amended by Laws 1907, 551.

Taking Up Estrays.

Sec. 1299. Any animal or animals running at large in this State without sufficient food or shelter at any time between the first day of November and the first day of the following March, and any bull old enough for service found running at large between the first day of November and the first day of June, and any animal that breaks or jumps more than once into any field or other inclosure surrounded by a lawful fence, may be taken up by any resident of this State, who shall immediately notify the constable of the precinct in which such animal or animals may be found, who shall proceed in the following manner:

(a) If the owner is known, he shall, within five days, notify such owner in writing, describing the animal or animals and where he may obtain the same.

(b) If the owner is unknown, then he shall at once send by registered mail to the county recorder a written notice describing the animal or animals so taken by marks, brands, age, sex, kind and color, and where the animal or animals are held, and shall search diligently on said animals for marks and brands.

(c) If the brands on said animal or animals are recorded, then such recorder shall immediately send by registered mail to the recorded owner, to the post office address as stated in the brand book, a copy of such notice, and shall notify the constable in the same manner of the name and address of such owner; and if the name of the owner of the brand cannot be found in the brand book or record, then such recorder shall immediately, by registered letter, notify said constable that the brand is not recorded.

(d) If the constable receives notice from the said county recorder that the brand described as being on said animal or animals is recorded, and the owner of the recorded brand has been notified, he shall wait ten days after receiving said notice before advertising the sale thereof as herein provided.

(e) If, however, said constable receives notice that the brand described be not recorded, he shall at once advertise the said animal or animals for sale in a paper published in said county, and if no paper is published in said county, then in a paper having general circulation therein, by notice, describing said animal or animals by giving their marks and brands, age as near as may be ascertained, sex, and color, and when and where the same will be sold, which notice must be published once a week for four successive weeks, and the sale must not be less than forty days from receiving said notice from the county recorder, and must be made in some public place in the precinct where the damage was done.

(f) If the owner of the recorded brand does not appear and claim the animal or animals within ten days after the constable receives notice from the county recorder, then said constable shall

proceed to advertise and sell said animal or animals the same as if the brand on said animal or animals was unrecorded.

(g) If any person appears before the constable and claims said animal or animals before such sale, then if such person appears to be the recorded owner of the brand of such animal or animals, such constable shall deliver such animal or animals to the owner on his paying all costs of caring for, sending and preparing notices, and advertising the same as hereinafter provided.

(h) If, however, such person is not the recorded owner of such brand, then such person must make affidavit that he is the owner, and state and give all particulars of ownership; and if the constable is satisfied that such person is the owner, the constable may turn over to him on his paying the damages assessed against said animal or animals and all costs of caring for, sending and preparing notices and advertising as hereinafter provided.

(i) If no person appears and claims said animal or animals on or before the day advertised for the sale, then such constable shall proceed to sell the same to the highest bidder for cash, and give a bill of sale to the purchaser or purchasers, and shall cause the same to be branded with the estray brand, which shall be (E) on the left side of the neck, and the purchaser shall thereupon become the owner of said animal or animals.

(j) Out of the moneys received for such sale, he shall first pay the cost of advertising, sending and preparing notices, advertising the same and selling such animal or animals, and if any moneys are remaining, he shall turn the same over to the treasurer of the school district where said animal or animals was or were taken up for the benefit of the school of said district.

(k) For the feeding and caring of such animal or animals, the constable shall receive the sum of ten cents per head per day; for writing and sending notices to the county recorder, he shall receive fifty cents; for selling the said animal or animals, he shall receive one dollar for the first head sold and fifty cents per head for each additional animal. The recorder shall receive fifty cents for each notice sent; the publishers shall receive legal rates for advertising each animal.

Historical: Laws 1905, 366, Sec. 1;
amended Laws 1907, 551, Sec. 1.

Owner to Recover Proceeds.

Sec. 1300. At any time within six months after receiving said moneys by the treasurer of said school district, any person claiming to be the owner of the animal or animals sold, may recover said money from the treasurer upon producing proof that the said animal or animals sold was or were his property, before the constable who made the sale of the same, or his successor in office, to his satisfaction, which proof must be reduced to writing and must be made under oath, and for such purpose said constable is empowered to administer oaths to the claimant or his witnesses. Upon making such proof, the constable shall give such claimant an order on the treasurer, who shall retain such order until the six months have expired, and if such claimant is the only person claiming the same,

said treasurer shall turn over such moneys to him, but if there be more than one claimant of said moneys, then such contestant claimants must bring their action within three months to determine who was the owner of the animal or animals sold, in the justice's court having jurisdiction, and the claimant receiving judgment in his favor shall be entitled to said moneys, and in case the ownership of said property be not proved as provided in this section within said time, then the moneys so turned over to said treasurer shall be forfeited to said school district for the benefit of the schools of said district, and the owner shall be forever barred from recovering the same.

Historical: Laws 1905, 366, Sec. 2.

Neglect of Constable.

Sec. 1301. Any constable wilfully or negligently failing to comply with any of the provisions of this chapter, shall be liable to any person injured for all damages he may sustain by reason of such failure.

Historical: Laws 1905, 366, Sec. 3.

CHAPTER 14.

HERD DISTRICTS.

Section	Section
1302. Commissioners may create herd districts.	1307. Violation of commissioners' order a misdemeanor.
1303. Petition to establish district.	1308. Same: Liability for damages.
1304. Notice of hearing petition.	1309. Trespassing animals may be taken up.
1305. Order creating district.	
1306. Limitation on powers of commissioners.	

Note: Certain sections of this chapter follow closely the Kansas law: See Kan. Gen. St. 1901, Secs. 7466 et seq.

Commissioners May Create Herd Districts.

Sec. 1302. The board of county commissioners of each county in the State shall have power to create "herd districts" within such county, as hereinafter provided; and when such district is so created, the provisions of this chapter shall apply and be enforceable therein.

Historical: Laws 1907, 126, Sec. 1.

Notice of Hearing Petition.

Sec. 1303. A majority of the qualified electors of any district, which district may include one or more voting precincts or parts of one or more voting precincts, may petition the board of county commissioners in writing to create such district a "herd district." Such petition shall describe the boundaries of the said proposed herd district, and shall designate what animals of the species of horses, mules, asses, cattle, swine, sheep and goats it is desired to prohibit from running at large in such district; and may designate the period of the year during which it is desired to prohibit such animals from running at large.

Historical: Laws 1907, 126, Sec. 2.

Notice of Hearing Petition.

Sec. 1304. It shall be the duty of the board of county commission-

ers, after such petition has been filed, to set a date for hearing said petition, notice of which hearing shall be given by posting notices thereof in three conspicuous places in the proposed herd district, and by publication for two weeks previous to said hearing in a newspaper published in the county nearest the proposed herd district.

Historical: Laws 1907, 126, Sec. 3.

Order Creating District.

Sec. 1305. At such hearing, if satisfied that a majority of the electors of said proposed herd district are in favor of the enforcement of the herd law therein, and that it would be beneficial to said district, the board of commissioners shall make an order creating such herd district, in accordance with the prayer of the petition, or with such modifications as it may choose to make. Such order shall specify a certain time at which it shall take effect, which time shall be at least thirty days after the making of said order; and said order shall continue in force, according to the terms thereof, until the same shall be vacated or modified by the board of commissioners, upon the petition of a majority of the electors of said district.

Historical: Laws 1907, 126, Sec. 4.

Limitation on Powers of Commissioners.

Sec. 1306. The provisions of Sections 1302 and 1305 shall not be construed to confer upon the board of county commissioners any jurisdiction over animals otherwise prohibited from running at large under existing laws.

Historical: Laws 1907, 126, Sec. 5.

Violation of Commissioners' Order a Misdemeanor.

Sec. 1307. Any person who shall, in violation of any order made pursuant to the provisions of Section 1305, permit or allow any of the animals designated in such order, owned by him or under his control, to run at large in such herd district, shall be deemed guilty of a misdemeanor. The pendency of any such action shall not prevent nor prejudice the bringing of another action against the same party for a violation of such order committed after the commencement of such pending action.

Historical: Laws 1907, 126, Sec. 6.

Same: Liability for Damages.

Sec. 1308. The owner of animals permitted or allowed to run at large in violation of any order made in accordance with the provisions of Section 1305, shall be liable to any person who shall suffer damage from the depredations or trespasses of such animals, without regard to the condition of his fence; and the person so damaged shall have a lien upon said animals for the amount of damage done, and the cost of the proceedings to recover the same, and may take the same into custody until all such damages are paid: *Provided*, That the person so taking said animals into custody shall not have the right to retain the same for more than five days without commencing an action against the owner thereof for such damages. Said damages may be recovered by a civil action before any court of competent

jurisdiction, and no such action shall be defeated or affected by reason of any criminal action commenced or prosecuted against the same party under the provisions of the preceding section.

Historical: Laws 1907, 126, Sec. 7.

Trespassing Animals May Be Taken Up.

Sec. 1309. Any person may take into custody any of the animals specified in the said order of the board of commissioners that may be about to commit a trespass upon the premises owned, occupied or in charge of such person, and retain the same until all reasonable charges for keeping said animals are paid: *Provided*, That it shall be the duty of the person so taking said animals into custody to notify the owner or person in charge of the same within five days thereafter, and if the owner or person in charge of them shall not be known to the person so taking said animals into custody, and cannot be found after diligent search and inquiry, he may proceed in the manner provided for the taking up and disposal of estrays.

Historical: Laws 1907, 126, Sec. 8.

THE HORTICULTURAL AND BEE INDUSTRIES.
CHAPTER 15.
HORTICULTURAL INSPECTION.

Article	Article
1. The State Board of Horticultural Inspection and its officers.	2. Regulations relating to fruit.

Note: A horticultural law was first enacted in 1891 (Laws 1890-91, 182). This act provided for the appointment of a horticultural commissioner in each county on application being made therefor. It was superseded by Laws 1905, 77, providing for the appointment of a State Horticultural Inspector, which in turn was repealed by Laws 1897, 109, which first created a Board of Horticultural Inspection, and the provisions of which were substantially the same as those of the present law, except that there was no general State Inspector, but merely district inspectors. This latter act was re-enacted by Laws 1899, 122, and was superseded in 1903 by the act contained in this chapter.

ARTICLE 1.

THE STATE BOARD OF HORTICULTURAL INSPECTION AND ITS OFFICERS.

Section	Section
1310. Constitution of State Board.	1314. Bond of Inspector and deputies.
1311. Meetings and election of officers.	1315. Duties.
1312. Appointment of Inspector and deputies.	1316. Same: Authority to enforce quarantine.
1313. Compensation of deputy inspectors.	1317. Reports.

Constitution of State Board.

Sec. 1310. The State Board of Horticultural Inspection consists of five members, as follows: The director of the experiment station and the professor of zoology of the University of Idaho shall be ex-officio members of said board, and the other three members shall be

appointed by the Governor of the State, and shall hold office for a term of three years, or until their successors are appointed and qualified: *Provided*, That the present members of the board shall hold office for the remainder of their respective terms in the same manner as if these Codes had not been passed, one member retiring and a new member being appointed each year. Before entering upon the duties of his office each member of the board shall take and subscribe the official oath prescribed for State officers, which oath shall be filed in the office of the Secretary of State. The members of the board shall serve without compensation, but shall receive actual expenses incurred in attending meetings of the board.

Historical: Laws 1903, 347, Secs. 1 (amended Laws 1907, 448, Sec. 1), 2 and 16, re-written in combination. The phraseology of Section 1 has been

changed so as to omit the provision for the appointment of the first board, and to preserve the present constitution of the board.

Meetings and Election of Officers.

Sec. 1311. The State Board of Horticultural Inspection shall elect its president and secretary annually from its members on the first Monday in April of each year, and each of said officers shall hold his said office at the pleasure of the board. The secretary shall perform such duties as may be prescribed by the board, and shall receive such compensation as the board may establish, not exceeding seven hundred dollars per annum, payable as provided in Section 1120. Said board shall meet annually at such time and at such places as it may determine.

Historical: Laws 1907, 448, Sec. 1, adding Section 21 to Laws 1903, 347, combined with Section 3 of the 1903 Law. Omitting the provision for the first election of officers. The provision fixing the secretary's salary at \$700 "payable as provided in Section 1120," is taken from Laws 1905, 54, Sec. 7 (Code Sec. 1120), which makes

the secretary an officer of both the Dairy, Food and Oil Board and the Horticultural Board, and requires his salary to be paid one-half from the horticultural funds and one-half from the dairy, food and oil funds. This section as it appeared in the 1903 law fixed the secretary's salary at not to exceed \$350.

Appointment of Inspector and Deputies.

Sec. 1312. The board shall appoint a State Horticultural Inspector, whose jurisdiction shall extend throughout the State, who shall receive a salary of eighteen hundred dollars per annum, payable as provided in Section 1120. They shall also divide the State into not more than ten districts, and the State Horticultural Inspector shall appoint, subject to the confirmation of the board, a deputy State horticultural inspector for each district so established, if necessary. The persons so appointed shall be especially qualified for their positions by reason of a practical knowledge of horticulture and the pests incident thereto. Their jurisdiction shall be limited to their respective districts. Said inspectors shall hold their office during the pleasure of said board. Said board shall make an estimate of the amount of money available for each district for each year, and no inspector shall incur any expense in the discharge of his duties in excess of said estimate furnished herein by said board. The aggregate sum of all the estimates furnished to the various inspectors for any one year must in no case exceed the amount available for carrying out this chapter for such year.

Historical: Laws 1903, 347, Sec. 4. "Who shall receive a salary of eighteen hundred dollars per annum, payable as provided in Section 1120," inserted for "and shall fix his salary at not less than nine hundred dollars per

annum," to conform to Laws 1905, 54, Sec. 7. (See Codes, Sec. 1120).

Cross Reference: Inspector is Dairy, Food and Oil Commissioner: Sec. 1118.

Compensation of Deputy Inspectors.

Sec. 1313. Each inspector so appointed shall receive as compensation for his services as such inspector the sum of five dollars per day for each day actually and necessarily employed in the discharge of his duties as prescribed in this chapter. Such compensation shall be paid out of the general fund of the State upon warrants duly drawn by the State Auditor, only after the bills presented for such services shall have been audited and approved by the secretary and a majority of said board, and audited as other bills against the State of Idaho.

Historical: Laws 1903, 347, Sec. 5.

Bond of Inspector and Deputies.

Sec. 1314. Before entering upon the discharge of his duties the State Horticultural Inspector shall be required to give bond in the sum of five thousand dollars for the faithful discharge of his duties; and before entering upon the discharge of their duties the several district horticultural inspectors shall be required to give bond in the sum of one thousand dollars for the faithful discharge and performance of their duties; said bonds to be approved by the State Board of Horticultural Inspection, and filed with the secretary of said board.

Historical: Laws 1907, 448, Sec. 1; amending, by inserting Sec. 25, Laws 1903, 347.

Duties.

Sec. 1315. It shall be the duty of said inspectors, or the State Inspector, either on their own motion or upon the complaint of interested parties, to enter and make, or cause to be made, inspection of any field, rights of way of any irrigation canals or railways, public highways, fields, orchards, nurseries, fruit packing houses, store rooms, salesrooms, depots, or other places where fruits are grown or stored, and of fruits, trees, plants, vines, shrubs or other articles within the State supposed to be, or liable to be, infested with pests, or with their eggs, or larvae, or infested with any contagious disease injurious to fruits, plants, trees, shrubs or vines, as hereinafter provided. If upon any inspection there be found any disease or pests, eggs or larvæ, of any pests injurious to fruits, plants, trees, shrubs, or vines, the inspector shall notify the owner or owners, or the person or persons in charge or in possession of said places, fields, orchards, nurseries, trees, plants, shrubs, vines, fruits or other articles, as aforesaid. The inspector shall require such person or persons to eradicate or destroy said injurious pests or insects or their eggs or larvæ, within a reasonable time to be specified. Said notice shall be served in person or in writing on said person or persons, or either of them, owning or having in charge such infested places, rights of way, fields, orchards, nurseries, trees, shrubs, vines, plants, fruits, or other articles as visited by the inspector, or it may be served in the same manner as the

summons in a civil action. If the owner or owners, or the person or persons in charge or in possession, of any highways, rights of way of canals or railways, fields, orchards, or nurseries or trees or plants or other articles infested with any insect or their eggs or larvæ, or with any disease injurious to any trees, fruits, vines, shrubs, plants, or any other articles infested, after having been notified as above to eradicate and destroy the same, shall fail, neglect, or refuse so to do, then any and all such places, public highways, rights of way, fields, orchards, nurseries, trees, plants, vines, fruit or other articles thus infested are adjudged and declared to be a public nuisance, and shall be proceeded against as such, and whenever any such nuisance shall exist at any place in the State or on the property of any non-resident, or on any highway, rights of way, or field as aforesaid, or on any property the owner or owners of which cannot be found within the State, or on any property where notice has been served as aforesaid, and where the owner or those in possession shall refuse or neglect to abate such nuisance within the time specified, it shall be the duty of the district inspector within the county wherein the nuisance is to be abated, or State Inspector, or either of them, and he is hereby empowered, to cause said nuisance to be abated at once by eradicating or destroying all said pests or their eggs or larvæ, or by disinfecting or destroying all fruits, trees, vines, plants, shrubs, pits, scions or other articles upon which said fungus diseases or pests or their eggs or larvæ may be found. The expense of such proceedings shall be paid out of the general fund of the State in the same manner as above set forth for paying said inspectors. All sums so paid shall be collected from the parties owning said real estate on which said nuisance was situated, by civil suit in the name of the board herein created, and it shall be the duty of the county attorney of the county in which said real estate is situated to bring said suit, and said sum when collected shall be paid into the State Treasury.

Historical: Laws 1903, 347, Sec. 6.

Same: Authority to Enforce Quarantine.

Sec. 1316. The inspectors are hereby vested with all the necessary authority to enforce quarantine against any infected fields, lots, rights of way, orchards, nurseries, trees, plants, buds, scions, or any other place or articles within the State, when the same may be liable to spread contagious diseases injurious to fruits or trees, or fruit crops of any kind, and to provide necessary rules and regulations to govern the same.

Historical: Laws 1903, 347, Sec. 7.

Reports.

Sec. 1317. Each inspector shall make a detailed report of all his official acts, to the secretary of said board on the first day of every month, which report shall be made under oath and shall include a statement of the number of days actually and necessarily employed and miles traveled as such inspector during said month, and a detailed statement of the amount due him or to other persons, for services or expenses incurred in carrying out the provisions of this chapter. The secretary of said board shall audit all such bills, and shall submit them by mail to each member of said board for approval and

signature. If approved by a majority of said board, said bills shall be transmitted to the State Auditor, and they shall be audited and paid as other claims against the State.

Historical: Laws 1903, 347, Sec. 15.

ARTICLE 2.

REGULATIONS RELATING TO FRUIT.

Section	Section
1318. Application and license to import trees.	1324. Non-compliance with law a misdemeanor.
1319. Imported trees to be fumigated before sale.	1325. Sale of infected fruit prohibited.
1320. Violation of sections a misdemeanor.	1326. Nursery agents to procure certificates.
1321. Certain trees to be destroyed.	1327. Inspection of imported nursery stock.
1322. Sale of diseased trees prohibited.	1328. Liability of county officers.
1323. Trees to be marked before shipment.	

Application and License to Import Trees.

Sec. 1318. No person, firm or corporation shall hereafter engage in or continue in the business of importing and selling within the State any fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock without first making an application in writing therefor to the State Board of Horticultural Inspection, which said application shall be accompanied with a good and satisfactory bond in the sum of one thousand dollars, to be approved by the State Board of Horticultural Inspection, conditioned for the faithful observance of all of the provisions of this chapter, and of the laws of the State of Idaho, by said applicant or applicants and their agents and representatives. As soon as said application is received and said bond approved, it shall be the duty of said Board of Horticultural Inspection to issue a certificate to such applicant or applicants, showing compliance upon the part of the said applicant or applicants with the provisions of this section, and thereafter the said applicant or applicants shall be authorized and permitted to carry on said business within the State of Idaho.

Historical: Laws 1903, 347, Sec. 8.

Imported Trees to Be Fumigated Before Sale.

Sec. 1319. No person, firm or corporation after importing into the State any fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock, shall sell or offer for sale or dispose of the same without first thoroughly fumigating the same with hydro-cyanic gas, unless said fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock be accompanied by a certificate from a competent person duly authorized by law in the State, Territory or district wherein said stock was grown, showing that the said stock had been properly fumigated, or disinfected by hydro-cyanic gas before being shipped.

Historical: Laws 1903, 347, Sec. 9.

Violation of Sections a Misdemeanor.

Sec. 1320. Any person, persons, firms or corporations, his or their agents, who shall bring or import into the State fruit trees, forest

trees, vines, plants, shrubs, scions, pits, or other nursery stock with intent to sell or dispose of the same, without first making application to the State Board of Horticultural Inspection, filing the necessary bonds and securing the certificate provided for in Section 1318, or who, having imported said fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock, into the State with intent to sell or dispose of the same, or any part thereof, without first notifying the State Horticultural Inspector or the deputy district inspector thereof, or having said fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock fumigated, as provided in Section 1319, or, where found infested, shall fail or refuse to destroy or disinfect the same, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided by Section 1324.

Historical: Laws 1903, 347, Sec. 10.

Certain Trees to Be Destroyed.

Sec. 1321. All peach, nectarine, apricot, plum, prune, almond or other trees budded or grafted on peach stock or roots; all peach or other pits, cuttings, buds or scions, raised or grown in a district where "peach yellows" or "peach rosette" is known to exist, are hereby prohibited from being offered for sale, gift, distribution, transportation or planting within the State of Idaho. Any person or persons, dealers, shippers, transportation companies, or their agents, who shall be in the possession of any such property for any purpose, shall, when required by the inspector, burn the same without delay.

Historical: Laws 1903, 347, Sec. 11.

Sale of Diseased Trees Prohibited.

Sec. 1322. Fruit of any kind, trees, plants, shrubs, cuttings, grafts, buds, seeds, scions, pits or other articles of any kind, grown in any foreign country or in any of the United States, or Territories, infested by any insect or insects, or their eggs or larvæ, or by any fungus diseases or their germs known to be injurious to fruit or fruit trees, or other trees, plants, vines, shrubs, or other articles liable to spread contagion, are hereby prohibited from being offered for sale, gift, distribution, transportation or planting in any county in this State, unless the same shall have been examined by the State Inspector or his deputy for such district, and, if found diseased or infested, they shall have been thoroughly disinfected in such manner as may be required by the inspector, the owner to pay the expense of such disinfection.

Historical: Laws 1903, 347, Sec. 12.

Trees to Be Marked Before Shipment.

Sec. 1323. Any person or persons shipping fruit trees or trees of any kind, shrubs, vines, scions, cuttings or plants within the State, shall affix to each package, bundle, or parcel containing the same, a distinct mark, stamp or label, showing the name of the shipper or grower, the locality where grown, and the variety of said trees, shrubs, vines, grafts, scions, cuttings, plants or buds; also any person or persons or corporation, his or their agents selling or offering for sale, fruit of any kind, shall affix to each package a distinct mark or

label showing the kind and quality of the same, the name of the grower or shipper, and the locality where grown.

Historical: Laws 1903, 347, Sec. 13.

Non-Compliance With Law a Misdemeanor.

Sec. 1324. Any person, persons, dealers or shippers, having in their possession any fruits, trees, vines, shrubs, plants, cuttings, grafts, buds, seeds, pits, scions or other articles infested with any injurious insects or their germs, or with any fungus or other diseases injurious to fruit or fruit trees, shrubs, or to other trees or plants, or who shall sell or offer for sale, gift, distribution, transportation or planting, or who shall refuse to destroy or disinfect, as provided in this chapter or as ordered by the State Inspector or by the deputy inspector in his district, the said fruit or trees, shrubs, vines, plants, cuttings, grafts, pits, scions or other articles, or who shall refuse or neglect to attach a distinct mark or label as hereinbefore provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five or more than three hundred dollars. All sums so collected shall be paid into the State Treasury. Neglect or refusal to comply with the orders of the State Inspector or his deputies, made in pursuance of the provisions of this chapter, shall constitute a misdemeanor, and shall be punished as provided for misdemeanors in this section.

Historical: Laws 1903, 347, Secs. 14, 18. The last sentence is Sec. 18.

Sale of Infected Fruit Prohibited.

Sec. 1325. It shall be unlawful to sell or dispose of, or offer to sell or dispose of, or to have in one's possession for sale or barter, any fruit which is or has been infected with San Jose scale or the larva or larvæ of the codling moth, and the fact that such fruit bears the marks of the San Jose scale, or is wormeaten by the larva or larvæ of the codling moth, shall be deemed conclusive evidence that said fruit is infected within the meaning of this section; and the State Inspector and the several deputy inspectors are hereby given power to seize and destroy such infected fruit whenever they shall find that the same has been packed, sold, shipped or offered for sale, or where the same has been exposed for sale, or is being held in any warehouse, store, salesroom or other place for the purpose of being sold, bartered, shipped or exposed for sale or barter; and it is hereby made the duty of said State Inspector and said district inspectors to enforce the provisions of this section, and any person or persons who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars and not more than three hundred dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment: *Provided*, That nothing in this section shall be construed to prevent the utilization of such infected fruit in the manufacture of fruit by-products, where said fruit has not been packed, sold, shipped, stored or offered or exposed for sale as fruit.

Historical: Laws 1907, 448, Sec. 1; amending by adding Sec. 22, Laws 1903, 347.

Nursery Agents to Procure Certificates.

Sec. 1326. All persons, firms or corporations complying with the provisions of Section 1318, by filing bond with the State Board of Horticultural Inspection, shall, upon the approval of such bond, be entitled, in addition to the certificate provided for in Section 1318, to such additional or duplicate certificates as he or they shall demand, upon the payment of the sum of one dollar each therefor, and said duplicate certificates shall entitle the holder thereof to represent, as agent, the person, firm or corporation named in said certificate, in all matters relating to the business for which said original certificate was issued; and it shall be unlawful for any person or persons to sell or solicit orders for the sale of, or to deliver or cause to be delivered any fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock, without first having secured such written authority and any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than three hundred dollars, and all sums so collected shall be paid into the State Treasury.

Historical: Laws 1907, 448, Sec. 1; amending, by adding Sec. 23, Laws 1903, 347.

Inspection of Imported Nursery Stock.

Sec. 1327. Any person, firm or corporation receiving any fruit trees, forest trees, vines, plants, shrubs, scions, pits or other nursery stock from persons, firms or corporations outside of the State, who do not hold a license to sell such nursery stock in this State, shall make application to the district or State Inspector to have said nursery stock inspected either by himself or some person duly qualified to perform said service, and the person, firm or corporation receiving such nursery stock shall be required to pay the necessary expenses for said inspection.

Historical: Laws 1907, 448, Sec. 1; amending, by adding Sec. 24, Laws 1903, 347.

Liability of County Officers.

Sec. 1238. All county officers shall be liable on their official bonds for the proper performance of any duties imposed by this chapter.

Historical: Laws 1903, 347, Sec. 17.

CHAPTER 16.**BEE INSPECTION.****Section**

- 1329. State Bee Inspector: Duties.
- 1330. Deputy bee inspectors.
- 1331. Treatment of diseased colonies.
- 1332. Inspector to be notified of foul broods.
- 1333. Inspector may enter premises to inspect.
- 1334. Penalty for failure to destroy infected hives.

Section

- 1335. Inspector to destroy infected bees and hives.
- 1336. Penalty for sale of infected appliances.
- 1337. Inspection of imported bees.
- 1338. Destruction of box hives.
- 1339. Inspector to disinfect person and clothing.
- 1340. Annual report of inspector.

State Bee Inspector: Duties.

Sec. 1329. The State Horticultural Inspector shall be ex officio State Bee Inspector, whose duties it shall be, either by himself or duly qualified and competent deputies, to examine bees of the State, and to treat, condemn and utterly destroy by fire or by burying at least two feet under ground, all bees, honey and fixtures found to be affected with foul brood or other infectious or contagious disease.

Historical: Laws 1905, 170, Sec. 1.

Deputy Bee Inspectors.

Sec. 1330. Upon the application of the president and secretary of any bee association, or upon petition of three bee keepers of any horticultural inspection district in the State, the State Bee Inspector may appoint deputy bee inspectors for the district from which such application or petition comes; and such deputy shall have the same powers and duties within his district as the State Bee Inspector, and the tenure of his office shall be concurrent with that of the State Bee Inspector, unless sooner dismissed.

Historical: Laws 1905, 170, Sec. 2.

Treatment of Diseased Colonies.

Sec. 1331. It shall be the duty of the State Bee Inspector or his deputy, upon receiving information from any source of the existence in any apiary in his district, of the disease known as foul brood, or any other infectious or contagious disease of bees, to forthwith inspect each colony of bees and all hives, implements and apparatus, honey and supplies on hand or used in connection with such apiary or otherwise distinctly designate each colony and apiary which he believes infected, and notify the owner or person in charge of said bees thereof, in writing or otherwise; and the owners of said bees, or the person in charge thereof, shall, within five days thereafter, practically and in good faith, apply and thereafter fully and effectually carry out to and upon such diseased colonies, such treatment as may have been prescribed by the inspector of bees for such cases; also thoroughly disinfect, to the satisfaction of such inspector, all bee hives, combs, honey and apparatus that have been used in connection with any such diseased colonies; or, at his election, the said owner or person in charge of such bees may, within the same time, utterly and completely destroy such bees, hives, house, comb houses, honey and apparatus by fire, or bury the same in the ground, with a covering or not less than two feet of earth.

Historical: Laws 1905, 170, Sec. 3.

Inspector to Be Notified of Foul Brood.

Sec. 1332. Every bee keeper or other person who shall be aware of the existence of foul brood, either in his own apiary or elsewhere, shall immediately notify the inspector of bees of the existence of such disease, and in default of so doing he shall be guilty of a misdemeanor and punishable by a fine of not more than five dollars and costs.

Historical: Laws 1905, 170, Sec. 4.

Inspector May Enter Premises to Inspect.

Sec. 1333. The inspector of bees shall have the right to enter the premises of any bee keeper where bees are kept, and inspect such bees; and any person resisting or refusing to allow such inspection by said bee inspector shall be guilty of a misdemeanor, and may be then and there arrested by the said bee inspector or person deputized by him, and brought before a justice of the peace, and upon conviction shall be fined not less than ten dollars nor more than twenty-five dollars.

Historical: Laws 1905, 170, Sec. 5.

Penalty for Failure to Destroy Infected Hives.

Sec. 1334. If any owner or keeper of bees knows of, or after being notified by the bee inspector that foul brood, or other infectious or contagious disease exists in any of the hives in the apiary owned by or in charge of said person, and shall fail to comply, within ten days from receiving said knowledge, and the date of receiving instructions from the bee inspector, to cure or destroy the bees or hives or their appliances, such person shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than twenty-five dollars.

Historical: Laws 1905, 170, Sec. 6.

Inspector to Destroy Infected Bees and Hives.

Sec. 1335. When the owner or possessor of bees shall disobey the directions of said inspector in curing or destroying any diseased bees, honey, hives, or appliances, they shall become unlawful and a public nuisance, and the said bee inspector shall at once destroy said bees, honey, hives, or appliances, and may deputize such additional persons as he may find necessary to effect such destruction.

Historical: Laws 1905, 170, Sec. 7.

Penalty for Sale of Infected Appliances.

Sec. 1336. Should any person whose bees have been destroyed or treated for foul brood sell, or offer for sale, any bees, hives or appurtenances of any kind, after such destruction or treatment, or before being authorized by the inspector to do so, or should he expose, in his bee yard or elsewhere, infected comb, honey, or other infected thing, or conceal the fact that said disease exists among his bees, he shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than fifty dollars.

Historical: Laws 1905, 170, Sec. 8.

Inspection of Imported Bees.

Sec. 1337. Any person, persons, company or corporation, who shall bring into the State of Idaho any apiary, colony or colonies of bees, shall immediately notify the State or deputy inspector of bees of such fact, stating where any such colony or colonies are being kept, and it shall be the duty of the State or deputy inspector to proceed to examine such colony or colonies, and ascertain whether or not they are free from foul brood or other infectious or contagious disease. Any person, persons, company or corporation who shall fail to notify

the State or deputy bee inspector, as required by this section, for a period of ten days after the arrival within the State of Idaho of such colony or colonies of bees, shall be guilty of a misdemeanor and punishable by a fine of not less than fifty dollars nor more than one hundred dollars.

Historical: Laws 1905, 170, Sec. 9.

Destruction of Box Hives.

Sec. 1338. The inspector shall have full power, in his discretion, to order any owner or possessor of bees dwelling in box hives (being mere boxes without movable frames) in apiaries where the disease exists, to transfer such bees to movable frame hives within a specified time, and in default of such transfer the inspector may destroy or order the destruction of such box hives and the bees dwelling therein.

Historical: Laws 1905, 170, Sec. 10.
"In apiaries where the disease exists"
is transposed from its former position

before the parenthesis, to more clearly express the sense.

Inspector to Disinfect Person and Clothing.

Sec. 1339. After inspecting infected hives or fixtures or handling diseased bees, the inspector shall, before leaving the premises or proceeding to any other apiary, thoroughly disinfect his own person and clothing, and shall see that any assistant or assistants with him have also thoroughly disinfected their persons and clothing.

Historical: Laws 1905, 170, Sec. 11.

Annual Report of Inspector.

Sec. 1340. The State Bee Inspector shall make an annual report to the Governor of Idaho, giving the number of apiaries visited, the number of diseased apiaries found, the number of colonies treated, also the number of colonies destroyed and statistics bearing on the bee industries.

Historical: Laws 1905, 170, Sec. 12.

REGULATION OF PROFESSIONS.

CHAPTER 17.

THE PRACTICE OF MEDICINE.

Section	Section
1341. Board of Medical Examiners.	1351. Cancellation of and refusal to grant license.
1342. Board to prescribe regulations.	1352. Definition of unprofessional or dishonorable conduct.
1343. Officers: Meetings: Records of board.	1353. Definition of practicing medicine: False diplomas or personation.
1344. Compensation of members.	1354. Definition of medical college in good standing.
1345. Annual report.	1355. Duties of county attorneys and Attorney General.
1346. Examination of applicants.	1356. Application of chapter.
1347. Conduct of examination.	
1348. Issuance and signing of license.	
1349. Recording of license.	
1350. Penalty for practicing without a license.	

Note: The practice of medicine and surgery was treated in Rev. St. 1887, Secs. 1298-1298e. This chapter was repealed by Laws 1897, 97, which, however, was held unconstitutional in *Brown v. Collister*, 5 Ida. 589. The 1899 law, found in this chapter, is substantially similar to the 1897 law.

Board of Medical Examiners.

Sec. 1341. The Governor of the State shall appoint a board of medical examiners to be known and styled "the State Board of Medical Examiners," consisting of six members, a majority of whom shall never be appointed from, nor represent, any one school of medicine, and not less than three schools of medicine shall be at all times represented on said board. All of said members shall be graduates of reputable medical colleges or universities, in good standing, and learned and skilled in theory and practice of medicine and surgery, and of good moral repute. The terms of office of the members forming the board shall be six years, and until their successors shall have been appointed and qualified. The members of said board as at present constituted shall hold office for their respective unexpired terms, two retiring each odd numbered year, and thereafter their successors shall be so appointed that two members shall retire, and two members be appointed, each odd numbered year. All persons appointed to serve upon said board shall, upon assuming the duties thereof, make oath before a District or probate judge, that they are graduates of colleges or universities in good standing, giving names and location thereof, and that they will faithfully and impartially perform the duties of such office. These oaths shall be made in duplicate, one to be retained on file in the office of the secretary of the board, and one to be forwarded to the Secretary of State, who shall, on receipt of the same, issue to each member appointed on said board, and complying with this section, a certificate of such appointment, under his hand and the Great Seal of the State: *Provided*, That the Governor shall remove any member of said board who shall be guilty of any criminal or dishonorable conduct, or who shall be guilty of any unprofessional conduct forbidden by this chapter, upon recommendation from the said board, made pursuant to a resolution thereof, duly authenticated, and accompanied by all the facts and testimony in possession of said board, upon which the said resolution is based. Vacancies occurring from death, resignation or any other cause shall be filled by appointment by the Governor within thirty days from the time such vacancies occur; such appointee shall serve during the unexpired portion of the term of the member whose place he fills: *Provided, further*, That no person otherwise eligible shall be appointed on said board who is not in possession of a license to practice medicine and surgery in this State under the provisions of this chapter.

Historical: Laws 1899, 345, Sec. 1, re-written so as to omit the provision for the appointment of the first board,

and to preserve the constitution of the board as a continuing body.

Board to Prescribe Regulations.

Sec. 1342. Said board shall have authority to prescribe and establish all needful rules, regulations and by-laws, not inconsistent with the laws of this State, or the United States, to carry into effect the provisions of this chapter.

Historical: Laws 1899, 345, Sec. 2.

Officers: Meetings: Records of Board.

Sec. 1343. Said board shall organize immediately after appointment by electing from among its members a president, secretary, and a treasurer, and shall provide a seal and shall attest its acts under said seal. Any member of the board shall have the authority to administer oaths,—and the board shall have authority to take testimony whenever the same is necessary in any manner relating to its official acts or duties. Said board shall hold regular meetings on the first Tuesday in the months of April and October in each year at the capital of the State, or at such other places as the board shall designate. Special meetings may also be called, when, in the opinion of a majority of the said board, the same are necessary, and shall be held at such times and places as a majority of the board may designate. Four members of the board shall constitute a quorum to transact business at any regular or special meeting. Said board shall keep a minute book or general book of record in which all the official acts, proceedings and transactions of said board shall appear in full. They shall also keep in addition thereto a “cash book,” in which shall appear in detail all receipts and disbursements of said board. They shall also keep a special register, containing the names and addresses of all applicants for license, together with the data required to be furnished in the application for said license. Said special register shall also show whether the applicant received license or was rejected, and if the applicant was rejected, it shall contain a full statement of the reasons therefor. Said general book of record, the cash-book, and the special register, shall be prima facie evidence of all matters therein recorded, and shall be public records in charge of the secretary of the board.

Historical: Laws 1899, 345, Sec. 3. The clause defining a quorum for the transaction of business is taken from Sec. 12 (Sec. 1348 post), to which it is not germane.

Cited: Raaf v. State Board, etc. (1906) 11 Ida. 707; 84 Pac. 33.

Compensation of Members.

Sec. 1344. The members of said board shall look alone to the revenues of this chapter for reimbursement of actual expenses incurred in attendance upon the business of sessions of said board, and they shall look alone to the same source for their per diem allowance, which shall not exceed the sum of five dollars per day each, for each day said board may be in actual session.

Historical: Laws 1899, 345, Sec. 17.

Annual Report.

Sec. 1345. The board shall make an annual report to the Governor of the State, which report shall set forth a full and complete history of all its official acts during the year, and shall also contain a true statement of all receipts and disbursements of said board for the period so reported.

Historical: Laws 1899, 345, Sec. 4.

Examination of Applicants.

Sec. 1346. Every person, except as hereinafter provided, desiring

to commence the practice of medicine and surgery, or either of them, within the State shall, immediately and prior to commencing the same, make a written application to the State Medical Examining Board, upon suitably prepared blanks, to be furnished by the board, for a license so to do. The applicant shall transmit with said application his or her diploma, together with an affidavit setting forth that said diploma is genuine and that the applicant is the rightful possessor thereof and the identical person named therein, and that the same was obtained by pursuing the regular course of study or examination in said institution, and setting forth that he or she is a citizen of the United States, or has declared his intention of becoming such. If the said diploma has been issued by a reputable college of medicine in good standing, said applicant shall be eligible to examination.

All applicants shall be examined in the applied branches of the theory and practice of medicine and surgery or either of them, as those branches are taught in the reputable chartered schools of the system of medicine to which the applicant belongs and which the applicant intends to practice, and such examination shall in all cases include anatomy, physiology, pathology, diagnosis, hygiene, chemistry, histology and toxicology.

No applicant for a license shall be allowed to practice medicine and surgery or either of them until such license shall have been granted. The board shall cause the examination to be scientific and practical, and sufficiently thorough to test the applicant's fitness to practice medicine and surgery or either of them, and if the applicant correctly answer at least seventy-five per cent of all the questions submitted, said board shall grant the applicant a license to practice medicine and surgery in this State. Every applicant for license under any of the provisions of this chapter, must furnish sufficient evidence to the board that he is of good moral character. All applications under this section must be accompanied by twenty-five dollars which is the fee for examination under this section. Should the applicant fail to pass said examination, the fee is not returnable. The cost of transmission to and from the board of all papers belonging to an applicant under this or any other section of this chapter shall be paid by the applicant. In case an applicant for an examination fails to pass the required examination, he or she may be re-examined after the expiration of six months, and within one year, without the payment of an additional fee, and thereafter said applicant may be examined as often as desired at any regular or special meeting of the board on the payment of the regular fee for such examination. Said board may also refuse a license, for unprofessional conduct, or conduct of a criminal, immoral, or dishonorable nature.

Historical: Laws 1899, 345, Sec. 6. Omitting the opening words, "After the passage of this act."

Cited: *State v. Cooper* (1905) 11 Ida. 219; 81 Pac. 374.

Constitutionality: The provisions of this section which require applicants for license to practice to be graduates of a reputable school of medicine, and which make the Board of Examiners the judge of what constitutes a reputable school, are reasonable police reg-

ulations. In *re Inman* (1902) 8 Ida 398; 69 Pac. 120.

Duties of Board: A Board of Medical Examiners examining applicants for a license to practice medicine, is required to exercise judgment and discretion in granting or refusing the license, and in so doing exercises quasi judicial functions. *Raaf v. State Board, etc.* (1906) 11 Ida. 707; 84 Pac. 33.

Conduct of Examination.

Sec. 1347. All questions upon the different branches of medicine and surgery submitted by said board to candidates for examination shall either be written or printed, or partly written and printed, and the questions on each branch shall be arranged upon separate sheets of paper and numbered consecutively. The candidates shall be supplied with a list of the questions upon but one branch or subject at a time; after completing his or her answers thereto, he or she shall be entitled to the next list of questions, and so on in like manner until said candidate shall have been examined in all the branches required. All answers to the questions thus submitted shall be in writing, upon suitable paper furnished by the board, no candidate being permitted to furnish his or her own paper for such written answers. Each list of the candidate's answers shall bear the same title as the corresponding list of questions, and each answer shall be numbered to correspond with the question to which it refers. The questions submitted by the board to each candidate examined, together with the answers thereto, shall be placed and kept on file in the office of the secretary of said board, and shall constitute part of the records of said office.

Historical: Laws 1899, 345, Sec. 8.

Issuance and Signing of Licenses.

Sec. 1348. All licenses issued by the board, shall be numbered consecutively and in the order issued. Each license shall be signed by the president and secretary of the board, under the official seal of the board issuing the same.

Historical: Laws 1899, 345, Sec. 12. Omitting the last sentence relating to a quorum for the transaction of business, which is combined with Sec. 3 (Sec. 1343 ante.). Sec. 5 of the act provided for the issuance of licenses without examination to established practitioners, on application be-

ing made within six months from the taking effect of the act. Failure to make such application within that time subjected the practitioner to examination as hereinbefore provided. That time having long since expired, the section is obsolete and is accordingly omitted.

Recording of License.

Sec. 1349. Every person receiving a license under this chapter shall, within thirty days thereafter, have the same recorded in the office of the county recorder, within the county where the licentiate intends to practice. Otherwise, said license is void. The county recorder of each county shall have, suitably prepared, a separate book of record in which all the licenses under this chapter presented to him, shall be recorded, and on the first day of December of each year, he shall furnish the secretary of the State Medical Examining Board a list of the licenses on record in his office, and upon notice to him from said secretary of the revocation of any license on record in his office, or of the death or removal from the county of any person whose license is on record therein, said recorder shall make a note of the fact on the page containing the record of said license, so that the records kept by said county recorder shall correspond with the records of his county, as kept by the secretary of said medical board.

Historical: Laws 1899, 345, Sec. 11.

Penalty for Practicing Without a License.

Sec. 1350. Any person practicing medicine and surgery within this State, without having obtained the license herein provided for, or contrary to the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars, nor more than three hundred dollars, or be imprisoned in the county jail not less than ten days, nor more than six months, or be punished by both such fine and imprisonment, in the discretion of the court, together with the costs of prosecution, and each day such person continues to practice medicine and surgery contrary to the provisions of this chapter, shall constitute a separate offense.

Historical: Laws 1899, 345, Sec. 10. Phraseology slightly changed to conform to grammatical rules.

Rejection of Applicant: Since this section makes it a misdemeanor to practice medicine without a license from the Board of Medical Examiners,

the court has no authority in reviewing the action of the examiners in rejecting an applicant to decree that such applicant has the right to practice medicine. *Raaf v. State Board*, etc. (1906) 11 Ida. 707; 84 Pac. 33.

Cancellation of and Refusal to Grant License.

Sec. 1351. When complaint is made to the board, of unprofessional or other conduct, on the part of any licentiate, under the provisions of this chapter, meriting a suspension, revocation or cancellation of his license, the board shall have power to hear evidence for and against the accused, touching such complaint, and if the board be satisfied from the evidence of the justice of such complaint, the board must institute proper proceedings in the District Court in and for the county where such licentiate resides, for the suspension or revocation and cancellation of such license, and the District Courts of this State are hereby vested with jurisdiction to hear and determine all such proceedings, and to suspend or revoke and cancel any license at issue in any such proceeding. The accused shall be entitled to appear in person or by counsel at every stage of any such proceeding, from the first hearing of said complaint before the board to the final disposition of the case in the District Court. All costs incident to any such proceeding in the District Court shall be assessed by the court as the justice of the case, in the discretion of the court, may require. In all such proceedings the county attorney shall appear for the board in the District Court. In case the board refuse to grant a license to practice under this chapter, the applicant shall have the right to have the action of the board refusing such license reviewed by the District Court in and for the county in which the meeting at which the license was refused was held, or such other county as may be agreed upon: *Provided*, Proceedings for such review be instituted within ten days after notice of such refusal to the applicant.

Historical: Laws 1899, 345, Sec. 9.

Review of Board's Action: The jurisdiction of courts in reviewing the action of the Board of Medical Examiners in refusing to grant a license is confined to the scope of investigation usually pursued and exercised by the courts in issuing and considering writs of review; this section does not

confer on disappointed applicants the right of appeal from the action of the examiners, or authorize the court to re-examine and re-grade the applicant, and to determine whether or not, as a matter of fact, the applicant passed the examination. *Raaf v. State Board*, etc. (1906) 11 Ida. 707; 84 Pac. 33

Definition of Unprofessional or Dishonorable Conduct.

Sec. 1352. The words "unprofessional or dishonorable conduct" as used in this chapter, are hereby declared to mean:

1. The procuring, or aiding or abetting in procuring, a criminal abortion;
2. The employment of what are popularly known as "cappers" or "steerers" in procuring practice;
3. The obtaining of a fee on the assurance that a manifestly incurable disease can be permanently cured;
4. A wilful betrayal of a professional secret to the detriment of a patient;
5. All advertisements of medical business in which untruthful and improbable statements are made;
6. All advertisements of any kind, of any medicine or means whereby the monthly periods of women can be regulated or the menses can be re-established if suppressed;
7. Conviction of any offense involving moral turpitude;
8. Habitual intemperance in the use of ardent spirits, narcotics or stimulants.

Historical: Laws 1899, 345, Sec. 7. | words "Section 6, or any other section" before "this chapter."
Omitting in the opening clause, the

Definition of Practicing Medicine: False Diplomas or Personation.

Sec. 1353. Any person shall be regarded as practicing medicine and surgery, or either, who shall advertise in any manner, or hold himself or herself out to the public, as a physician and surgeon, or either, in this State, or who shall investigate or diagnosticate, or offer to investigate or diagnosticate, any physical or mental ailment of any person with a view of relieving the same as is commonly done by physicians and surgeons, or suggest, recommend, prescribe or direct, for the use of any person, sick, injured or deformed, any drug, medicine, means or appliance for the intended relief, palliation or cure of the same, with the intent of receiving therefor, either directly or indirectly, any fee, gift or compensation whatsoever: *Provided, however,* This chapter shall not apply to dentists and registered pharmacists or midwives in the legitimate practice of their respective professions, nor to services rendered in cases of emergency, where no fee is charged.

Any person who shall present to the board, as his or her own, the diploma of another, or a forged affidavit of identification, or who shall attempt to personate another practitioner of a like or different name, shall, upon conviction thereof, be subject to such fine and imprisonment as are made and provided by the statutes of the State of Idaho for the crime of forgery.

Historical: Laws 1899, 345, Sec. 14.

Cross Reference: Punishment for forgery: Sec. 7031.

Definition of Medical College in Good Standing.

Sec. 1354. The words "respectable or reputable medical college or university in good standing" are hereby declared to mean such medical colleges or universities as are legally chartered, reputable,

and in good standing within the State or country where they are located.

Historical: Laws 1899, 345, Sec. 13.

Duties of County Attorneys and Attorney General.

Sec. 1355. It shall be the duty of the county attorneys to prosecute all violations of this chapter within their respective counties. In all cases of appeal to the Supreme Court of the State, the Attorney General thereof shall represent said board upon such appeal. The board shall investigate all complaints of non-compliance with, or violations of, the provisions of this chapter, and bring all such cases to the notice of the proper prosecuting officers.

Historical: Laws 1899, 345, Sec. 15.

Application of Chapter.

Sec. 1356. This chapter shall not apply to commissioned medical officers of the United States Army, Navy, and Marine Hospital service in the discharge of their official duties, nor to railway surgeons in the discharge of official duties, nor to legally qualified physicians and surgeons from other States, when called in consultation with any legally qualified physician and surgeon of this State.

Historical: Laws 1899, 345, Sec. 16.

CHAPTER 18.

PRACTICE OF DENTISTRY.

Section	Section
1357. State Board of Dental Examiners.	1362. Registration without examination.
1358. Officers, meetings and records of board.	1363. Certificate and record thereof.
1359. Payment of expenses.	1364. Annual license fee.
1360. Practicing dentistry defined.	1365. Practicing without license a misdemeanor.
1361. Examination of applicants to practice.	

Note: This chapter is taken from the 1907 law, which supersedes and repeals Laws 1899, 387.

State Board of Dental Examiners.

Sec. 1357. The State Board of Dental Examiners, consisting of five members, heretofore created, shall continue to be the State Board of Dental Examiners. Upon the expiration of each member's term of office the Governor shall appoint his successor, who shall hold office for three years, or until his successor is appointed and qualified. In case of a vacancy occurring in said board, the Governor shall fill the same by appointment. No person shall be eligible for membership on such board who is not a legally practicing dentist in this State. The Board of Dental Examiners may sue and be sued, and in all actions brought by or against it, it shall be made a party under the name of the Board of Dental Examiners of the State of Idaho, and no suit shall abate by reason of any change in the membership of said board.

Historical: Laws 1907, 547, Secs. 2, 8.

Officers, Meetings and Records of Board.

Sec. 1358. Such board shall have power to make reasonable rules and regulations for carrying into effect the provisions of this chapter. It shall choose one of its members president, and one secretary thereof, and shall have a common seal. The secretary shall give such bond as the board shall, from time to time, require. It shall hold one regular meeting each year, and special meetings at such time and place as the board may select. A majority of the members of the board shall constitute a quorum for the transaction of business, but one less number may adjourn from time to time. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and complete record of all persons licensed and registered by it, and such records, together with a list of licensed and registered dentists, shall be public records, and shall at all reasonable times be open to public inspection. Such records, or a transcript of the same, or any part thereof, under the seal of the board, certified by the secretary thereof, shall be competent evidence of the facts therein stated. A certificate of the secretary, under the seal of the board, stating that any person is or is not a registered dentist shall be prima facie evidence of the fact. The board shall make an annual report to the Governor, by December first of each year, together with an account of all moneys received and disbursed under this chapter.

Historical: Laws 1907, 547, Sec. 3. The provision requiring the secretary to give bond, and the provision requiring reports to be made to the Governor are taken from Section 4

(Sec. 1359) to which they are not germane.

Cross Reference: Reports of officers: Sec. 279.

Payment of Expenses.

Sec. 1359. All legitimate and necessary expenses, incurred in attending and holding the sessions of said board, shall be paid out of the funds coming into possession of the board, from fees, fines and penalties recovered under the provisions of this chapter: *Provided*, That no part of the expenses of the board shall ever be paid out of the State Treasury. All funds received in excess of expenses above provided for shall be held by the secretary of said board as a special fund for meeting the expenses of carrying out the provisions of this chapter.

Historical: Laws 1907, 547, Sec. 4. The phrases preceding the proviso are transposed for grammatical reasons. The two concluding sentences of the section which required the secretary

to give bond, and the board to report to the Governor, are transferred to the preceding section, to which they seemed more germane.

Practicing Dentistry Defined.

Sec. 1360. All persons shall be said to be practicing dentistry within the meaning of this chapter who shall, contrary to this chapter, for a fee, salary or other reward, paid either directly or indirectly to himself or to another person, perform operations or parts of operations of any kind on, or treat diseases or lesions of the human teeth or jaws, or correct malpositions thereof. This chapter shall not be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in a dental office or laboratory, or to prohibit the student of a licensed dentist from assisting his

preceptor in dental operations while in his presence and under his direct and immediate personal supervision, or to prohibit a duly licensed physician from treating the diseases of the mouth, or performing operations in oral surgery.

Historical: Laws 1907, 547, Sec. 6.
The word "perform" inserted before

"operations," to express what seemed to be the meaning of the section.

Examination of Applicants to Practice.

Sec. 1361. Any person who shall desire to begin the practice of dentistry in the State of Idaho, shall file his name, together with an application for examination, with the secretary of the State Board of Dental Examiners, and at the time of making application shall pay to the secretary a fee of twenty-five dollars, and shall present himself at the first meeting of said board to undergo examination before that body. In order to be eligible for such examination, such person shall present to said board his diploma from some dental college in good standing, or a license from some other State dental board, or furnish proof of having been engaged in the study of dentistry under a licensed dentist for at least four years. The examination shall be elementary and practical in character, but sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include answering in the English language questions of and on the following subjects: Anatomy, physiology, chemistry, materia medica, therapeutics, oral surgery, metallurgy, histology, pathology, operative and mechanical dentistry, and also demonstrations of skill in operative and mechanical dentistry. All persons successfully passing such examinations shall be registered as licensed dentists in the record book of the board, and shall also receive a certificate of such registration. Said certificate shall be signed by the president and the secretary of the board, and shall also bear the official seal of said board. The examination fee shall in no case be refunded, but a candidate failing in his first examination may demand a second examination at a subsequent meeting of the board, and no fee shall be charged for said examination.

Historical: Laws 1907, 547, Sec. 10.

Registration Without Examination.

Sec. 1362. Said board may, in its discretion, accept and register, upon payment of a registration fee, and without examination of the applicant, any certificate which shall have been issued to him by the dental examining board of any State or Territory of the United States: *Provided, however,* That the legal requirements of such dental examining board shall have been at the time of issuing such certificate in no degree or particular less than those of Idaho at the time when such certificate shall have been presented for registration to the board created by this chapter; and, *Provided,* That such applicant shall have been lawfully engaged in the practice of dentistry in the State from which he shall present his certificate for a period of five years next preceding his application to the Dental Board of the State of Idaho; and, *Provided, further,* That the provisions in this section contained shall be held to apply only to such of said dental examining boards as accept and register the certificates granted by this board, without examination by them of the persons holding

such certificates. Each applicant on making application, shall pay to the secretary of the board a fee of twenty-five dollars.

Historical: Laws 1907, 547, Sec. 11.

Certificate and Record Thereof.

Sec. 1363. The certificate in this chapter provided for shall entitle the holder thereof to practice dentistry in any county in the State of Idaho: *Provided*, Such certificate shall first be filed for record in the office of the recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this State unless such certificate shall have been first recorded in the office of the recorder of such county as herein provided: *Provided, further*, That such holder of a certificate may practice in more than one or any number of counties in this State on having such certificate recorded in each of such counties in which such holder desires to so practice. Said Board of Dental Examiners shall, upon satisfactory proof of the loss of any certificate issued under the provisions of this chapter, issue a new certificate in place thereof. The county recorder shall charge for registering such certificate a fee of one dollar.

Historical: Laws 1907, 547, Sec. 9.

Annual License Fee.

Sec. 1364. Every registered dentist shall, in each and every year, pay to said Board of Examiners the sum of two dollars as a license fee for such year. Such payment shall be made prior to May first in each and every year. And in case of default in such payments by any person, his license may be revoked by the Board of Examiners upon twenty days' notice of the time and place of considering such revocation. But no license shall be revoked for such non-payment if the person so notified, before or at such consideration, shall pay his fee and such penalty as may be imposed by said board: *Provided*, That said board may impose a penalty of not to exceed ten dollars as a condition of allowing his license to stand: *Provided, further*, That said Board of Examiners may collect any such bills by law.

Historical: Laws 1907, 547, Sec. 7.

Practicing Without License a Misdemeanor.

Sec. 1365. It shall be unlawful for any person to practice dentistry in this State without having a license so to do from the Board of Dental Examiners. Any person who, as principal, agent, employer or employee, in any manner whatsoever shall practice dentistry, or who shall run, operate, or cause to be operated, or manage a dental office or headquarters in the State of Idaho, without having first filed for record and had recorded in the office of the recorder of the county wherein he shall so practice or do such act, a license from said Board of Dental Examiners as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars, nor more than two hundred dollars, or be confined for any period not exceeding six months in the county jail, for each and every offense. All fines received under this chapter shall be paid one-half to the school fund in the county in which conviction is secured, and one-half to the State Dental Board.

Historical: Laws 1907, 547, Secs. 1, and 5.

CHAPTER 19.

THE PRACTICE OF OSTEOPATHY.

Section

1366. Board of Osteopathic Examination and Registration.
1367. Compensation of members of board.
1368. Examination and issuance of certificates.

Section

1369. Certificates to be recorded.
1370. Fraudulent practice a misdemeanor.
1371. Osteopaths to observe health regulations.

Note: This law is taken almost verbatim from a model bill framed by a Legislative Committee appointed by the American Osteopathic Association. See Mo. An. St. 1906, Vol. 4 Secs. 8539 et seq.

Board of Osteopathic Examination and Registration.

Sec. 1366. The Board of Osteopathic Examination and Registration consists of five persons who are reputable practitioners of osteopathy, selected from a number of not less than fifteen who are recommended by the State Osteopathic Association; the recommendation of the president and secretary being sufficient proof of the appointee's standing in the profession. The term of office of one member of the board expires each year, and in each year the Governor shall appoint one person to fill the vacancy thus created in the board at that time from a number of not less than five who are recommended by the State Osteopathic Association; the term of said appointee to be for the term of five years. A vacancy occurring from any cause shall be filled by the Governor for the unexpired term in the same manner as last above stated. The board shall meet annually in the City of Boise, and organize by electing a president, secretary and treasurer, each to serve for one year. The treasurer and secretary shall each give bond, approved by the board, for the faithful performance of their respective duties, in such sum as the board may, from time to time, determine. The board shall have a common seal, and shall formulate rules to govern its actions; and the president and secretary shall be empowered to administer oaths. The board shall meet in the City of Boise in June of each year, and at such other times and places as a majority of the board may designate. Three members of the board shall constitute a quorum, but no certificate to practice osteopathy shall be granted on the affirmative vote of less than three. The board shall keep a record of its proceedings and a register of all applicants for certificates, giving the name and location of the institution granting the applicant the degree of doctor of, or diplomate in, osteopathy; the date of his or her diploma; and also whether the applicant was rejected, or diploma granted. The record and register shall be prima facie evidence of all matters recorded therein.

Historical: Laws 1907, 128, Sec. 1. Re-written so as to omit the provision

for the appointment and first meeting of the board.

Compensation of Members of Board.

Sec. 1367. All fees shall be paid in advance to the treasurer of the board, to be held by him as a fund for the use of said Board of Osteopathic Examination and Registration. The compensation and

expenses of the officers and members of said board, and all expenses proper and necessary, in the opinion of said board, to discharge its duties under and to enforce the law, shall be paid out of said funds upon warrants of the president and secretary of said board, and no expense shall be created to exceed the income of fees or fines as hereby provided. The salaries shall be fixed by the board, but shall not exceed ten dollars per day and railroad and hotel expenses.

Historical: Laws 1907, 128, Sec. 3.

Examination and Issuance of Certificates.

Sec. 1368. Any person, before engaging in the practice of osteopathy in this State, shall, upon payment of a fee of twenty-five dollars, make application for certificate to practice osteopathy, to the Board of Osteopathic Examination and Registration, on a form prescribed by the board, giving:

1. His name and age, which shall not be less than twenty-one years, and residence;

2. Evidence that such applicant shall have, previous to the beginning of his course in osteopathy, a certificate of examination for admission to the freshman class of a reputable literary or scientific college, a diploma from a high school, academy, State normal school, college or university, approved by the aforesaid board;

3. The date of his or her diploma, and evidence that such diploma was granted on personal attendance and completion of a course of not less than three terms of not less than nine months each in three separate years;

4. The name of the school or college of osteopathy from which said applicant is a graduate, and which shall have been in good repute as such at the time of granting his or her diploma, as determined by the board.

The board may, in its discretion, accept as the equivalent of any part or all of the second, third and fourth requirements, evidence of five or more years of reputable practice of osteopathy: *Provided*, Such substitution be specified in the certificate.

If the evidence thus set forth, and to which the applicant shall be required to make affidavit, shall meet the requirements of the board as prescribed by its rules, then the board shall require the applicant to submit to an examination as to his qualification for the practice of osteopathy, which shall include the subjects of anatomy, physiology, physiological chemistry, toxicology, osteopathic pathology; osteopathic diagnosis, hygiene, osteopathic obstetrics and gynecology, minor surgery, principles and practice of osteopathy, and such other subjects as the board may require. If such examination is passed in a manner satisfactory to the board, or with a grade of seventy-five per cent, then the board shall issue to said applicant a certificate granting him or her the right to practice osteopathy in the State of Idaho. All examination papers shall be recorded and kept by the board. Any person failing to pass such examination may be re-examined at any regular meeting of the board within one year from the time of such failure, without additional fee: *Provided*, That a physician's certificate issued by a reputable school of osteopathy to a graduate from a reputable school of medicine after an attendance of

not less than two terms of not less than nine months each in two separate years may be accepted by the board on the same terms as a diploma, and the holder thereof shall be subject to the same regulations in all other respects as other applicants before the board. *Provided, further,* That the board may, in its discretion, dispense with an examination in the case, first, of an osteopathic physician duly authorized to practice osteopathy in any other State or Territory or the District of Columbia, who presents a certificate of license issued after an examination by the legally constituted board of said State, Territory or District of Columbia, accorded only to applicants of equal grade with those required in this State; or, second, of an osteopathic physician who has been in the actual practice of osteopathy for five years, who is a graduate of a reputable school of osteopathy, who may desire to change his residence to this State and who makes application, on a form to be prescribed by the board, accompanied by a fee of twenty-five dollars. The secretary of the board may grant a temporary permit until a regular meeting of the board or to such time as the board can conveniently meet, to one whom he considers eligible to practice in the State, and who may desire to commence the practice immediately. Such permit shall only be valid until legal action of the board can be taken. In all of the above provisions the fee shall be the same as charged to applicants for examination.

The board may refuse to grant a certificate to any person convicted of a felony or of unprofessional conduct, or who is addicted to any vice to such degree as to render him unfit to practice osteopathy, and may, after due notice and hearing, revoke such certificate for like cause.

Historical: Laws 1907, 128, Sec. 2. Omitting provisions, now obsolete, for the registration of applicants engaged in practice prior to the passage of the act, and as to qualifications of appli-

cants during, and prior to, the year 1908, which will be obsolete at the time of the submission of these Codes to the Legislature.

Certificates to Be Recorded.

Sec. 1369. Every person holding a certificate from the State Board of Examination and Registration shall have it recorded in the office of the recorder of the county in which he or she expects to practice. Until such certificate is filed for record, the holder shall exercise none of the rights or privileges therein conferred. Such certificate shall be recorded as are other medical certificates and for the same fee.

Historical: Laws 1907, 128, Sec. 5.

Fraudulent Practice a Misdemeanor.

Sec. 1370. Any person who shall practice, or pretend or attempt to practice or use, the science or system of osteopathy in treating diseases of the human body by fraud or misrepresentation; or any person who shall buy, sell or fraudulently obtain any diploma, license, record or registration to practice osteopathy, illegally obtained, or signed or issued unlawfully or under fraudulent representation; or who shall use any of the forms or letters "osteopathy," "osteopath," or osteopathist," "Diplomate in Osteopathy," "D. O.," "D. Sc. O.," "Osteopathic Physician," "Doctor of Osteopathy," or any other title

or letters, either alone or with other qualifying words or phrases, under such circumstances as to induce the belief that the person using such term or terms is engaged in the practice of osteopathy; without having complied with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than two hundred dollars for each offense, or be imprisoned not less than three months nor more than six months in the county jail.

Historical: Laws 1907, 128, Sec. 6.
"Be imprisoned" inserted before "not

less than three months," to complete the sense.

Osteopaths to Observe Health Regulations.

Sec. 1371. Osteopathic physicians shall observe and be subject to all State and municipal regulations relating to the control of contagious diseases, reporting and certifying births and deaths, and all matters pertaining to public health, the same as all other schools of medicine, and such reports shall be accepted by the officers of the district to whom the same are made.

Historical: Laws 1907, 128, Sec. 4.

CHAPTER 20.

THE PRACTICE OF OPTOMETRY.

Section

- 1372. Practice of optometry defined.
- 1373. Unlawful to practice without certificate.
- 1374. State Board of Examiners in optometry.
- 1375. Officers and meetings of board.
- 1376. Compensation and expenses of board.
- 1377. Examination and registration of practitioners.

Section

- 1378. Certificate of registration to be recorded.
- 1379. Certificate to be displayed.
- 1380. Annual registration fee.
- 1381. Revocation of certificate.
- 1382. Violations of chapter a misdemeanor.
- 1383. Same: Jurisdiction and conduct of prosecution.
- 1384. Application of chapter.

Practice of Optometry Defined.

Sec. 1372. The practice of optometry is defined as follows: Namely: The employment of subjective or objective mechanical means to determine the accommodative and refractive states of the eye and the scope of its functions in general.

Historical: Laws 1907, 574, Sec. 1.

California Legislation: Same except "and" for "or" between "subjec-

tive" and "objective": Henning's Gen. Laws, 1016, Sec. 1.

Unlawful to Practice Without Certificate.

Sec. 1373. It shall be unlawful for any person to practice optometry in the State of Idaho unless he shall first have obtained a certificate of registration and filed the same, or a certified copy thereof, with the recorder of the county of his residence, all as hereinafter provided.

Historical: Laws 1907, 574, Sec. 2.
"Recorder" inserted for "clerk". There is no county clerk, and in practice these certificates are filed with the recorder.

California Legislation: Same except "California" for "Idaho", and "clerk" for "recorder": Henning's Gen. Laws, 1016, Sec. 2.

State Board of Examiners in Optometry.

Sec. 1374. There is hereby created a board whose duty it is to carry out the purposes and enforce the provisions of this chapter, which shall be styled the "Idaho State Board of Examiners in Optometry." Said board shall consist of three persons engaged in the actual practice of optometry and residing in the State of Idaho, to be appointed by the Governor for a term of four years and until their successors are appointed. Appointments to fill vacancies caused by death, resignation or removal, shall be made for the residue of such term by the Governor. Nothing herein contained shall affect the constitution of the present board or the terms of office of its members. The members of said board, before entering upon their duties, shall respectively take and subscribe the oath required by other officers, and file the same with the recorder of the county in which said member resides, and said board shall have a common seal.

Historical: Laws 1907, 574, Sec. 3, rewritten so as to omit the provision relating to the appointment of the first board, and preserving its constitution. "Recorder" inserted for

"clerk"; see note to preceding section.

California Legislation: Similar: Henning's Gen. Laws, 1016, Sec. 3.

Officers and Meetings of Board.

Sec. 1375. Said board shall choose, annually, one of its members president, and one secretary thereof, who severally shall have the power during their terms of office to administer oaths and take affidavits, certifying thereto under their hand and the seal of the board. Said board shall meet at least once in each year at the State capitol, and in addition thereto, whenever and wherever the president and secretary thereof shall call a meeting. A majority of said board shall at all times constitute a quorum. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable times be open to public inspection.

Historical: Laws 1907, 574, Sec. 4. Omitting the provision for the first meeting of the board. "Certifying" inserted for "certify", line 4.

California Legislation: Same: Henning's Gen. Laws, 1016, Sec. 4.

Compensation and Expenses of Board.

Sec. 1376. Out of the funds coming into the possession of said board, each member thereof may receive, as compensation, the sum of five dollars for each day actually engaged in the duties of the office, and mileage at three cents per mile for all distance necessarily traveled in going and coming from the meetings of the board. Said expenses shall be paid from the fees and assessments received by the board under the provisions of this chapter, and no part of the salary or other part of expenses of the board shall ever be paid out of the State Treasury. All moneys received in excess of said per diem allowance and mileage, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board and carrying out the provisions of this chapter, and he shall give such bonds as the board shall from time to time direct, and the said board shall make an annual report of its proceedings to the Governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this chapter.

Historical: Laws 1907, 574, Sec. 11.

Examination and Registration of Practitioners.

Sec. 1377. Every person, before beginning to practice optometry in this State, shall pass an examination before said board of examiners. Such examination shall be confined to such knowledge as is essential to the practice of optometry. Any person having signified to said board his desire to be examined by them shall appear before them at such time and place as they may designate, and, before beginning such examination shall pay to the secretary of said board for the use of said board, the sum of ten dollars, and if he shall successfully pass such examination, shall pay to said secretary, for use of said board, a further sum of five dollars on the issuance of a certificate. All persons successfully passing such examination shall be registered in the board register, which shall be kept by said secretary, as licensed to practice optometry, and shall also receive a certificate of such registration to be signed by the president and secretary of said board, which shall be filed as hereinafter provided.

Historical: Laws 1907, 574, Sec. 5. Omitting "after the passage of this act". Persons engaged in the practice at the time of the passage of the act were exempted from examination, and were entitled to a certificate on making application within six months,

by Secs. 6 and 7 of the act, which are omitted from these Codes because now obsolete.

California Legislation: Substantially same: Henning's Gen. Laws, 1016, Sec. 5.

Certificate of Registration to Be Recorded.

Sec. 1378. Recipients of said certificate of registration shall present the same for record to the recorder of the county in which they reside, and shall pay the legal fee to the recorder for recording the same. Said recorder shall record said certificate in a book to be provided by him for that purpose. Any failure, neglect or refusal on the part of the person holding such certificate, or copy of record to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. Such board shall be entitled to a fee of one dollar for the re-issue of any certificate, and the recorder of any county shall be entitled to a fee of one dollar for making and certifying a copy of the record of any such certificate.

Historical: Laws 1907, 574, Sec. 8. "Recorder" for "clerk"; see note to Sec. 1373. The last sentence of Sec. 9 of the act is practically identical with the sentence of this section, beginning "Any failure, neglect, or refusal" and is omitted to avoid duplication. The remainder of Sec. 9 is

obsolete, because applicable only to persons engaged in practice at the time of the passage of the act, and referring to the omitted sections 6 and 7. See note to preceding section.

California Legislation: Similar: Henning's Gen. Laws, 1017, Sec. 8.

Certificate to Be Displayed.

Sec. 1379. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

Historical: Laws 1907, 574, Sec. 10.

California Legislation: Same: Henning's Gen. Laws, 1017, Sec. 10.

Annual Registration Fee.

Sec. 1380. Every registered optometrist who desires to continue

the practice of optometry in this State, shall annually, on such date as the board of optometry may determine, pay to the secretary of said board a registration fee to be fixed by the board, but which shall in no case exceed the sum of two dollars per annum, for which he shall receive a renewal of said registration; and in case of default in such payment by any person, his certificate may be revoked by the board of examiners, upon twenty days' notice of the time and place of considering such revocation. But no certificate shall be revoked for such non-payment, if the person so notified shall pay, before or at such time of consideration, his fee and such penalty as may be imposed by said board: *Provided*, That said board may impose a penalty of five dollars and no more, on any one person so notified, as a condition of allowing his certificate to stand: *Provided, further*, That said board of examiners may collect any such fees by suit.

Historical: Laws 1907, 574, Sec. 12.

California Legislation: Same: Henning's Gen. Laws, 1018, Sec. 12.

Revocation of Certificate.

Sec. 1381. Said board shall have power to revoke any certificate of registration granted by it under this chapter for conviction of crime, for habitual drunkenness, gross incompetency, or while the licentiate is suffering from contagious or infectious disease: *Provided*, That before any certificate shall be so revoked, the holder thereof shall have notice in writing of the charge or charges against him, and on a day specified in said notice, at least five days after the service thereof, shall be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witnesses against him. Any person whose certificate has been revoked, may, after the expiration of ninety days, apply to have the same regranted, and the same shall be regranted, upon a satisfactory showing that the disqualification has ceased.

Historical: Laws 1907, 574, Sec. 13.

California Legislation: Similar: Henning's Gen. Laws, 1018, Sec. 13.

Violations of Chapter a Misdemeanor.

Sec. 1382. Any person who shall violate any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty dollars, nor more than one hundred dollars, or be imprisoned in the county jail for a term of not less than one month nor exceeding three months and in default of payment of said fine, shall be imprisoned in the county jail at the rate of one day for every two dollars of the fine so imposed. All fines thus received shall be paid into the common school fund of the county in which such conviction takes place.

Historical: Laws 1907, 574, Sec. 14. "Be imprisoned" inserted for "by imprisonment" to conform to grammatical rules.

California Legislation: Similar: Henning's Gen. Laws, 1018, Sec. 14.

Same: Jurisdiction and Conduct of Prosecutions.

Sec. 1383. Justices of the peace and the respective municipal courts shall have jurisdiction of violations of this chapter. It shall

be the duty of the respective county attorneys to prosecute all violations of this chapter.

Historical: Laws 1907, 574, Sec. 15. "County attorneys" substituted for "district attorneys".

California Legislation: Same: Henning's Gen. Laws, 1018, Sec. 15.

Application of Chapter.

Sec. 1384. Nothing in this chapter shall be construed to apply to physicians and surgeons authorized to practice under the laws of the State of Idaho, nor to persons who sell spectacles or eye-glasses in the ordinary course of trade, and who do not attempt to employ subjective or objective mechanical means to determine the accommodative and refractive states of the eye.

Historical: Laws 1907, 574, Sec. 16.

California Legislation: Same: Henning's Gen. Laws, 1018, Sec. 16.

CHAPTER 21. THE PRACTICE OF PHARMACY.

Section	Section
1385. Constitution of Board of Pharmacy.	1393. Issuance and refusal of licenses.
1386. Officers and meetings of board.	1394. License of registered pharmacists from other States.
1387. Records and reports.	1395. Licenses to be displayed: Renewal.
1388. Compensation of members of board.	1396. Unauthorized persons not to use title of pharmacists.
1389. Fees.	1397. Exemption from jury service.
1390. Drugs to be sold by registered pharmacists.	1398. Restrictions upon sale of poisons and patent medicine.
1391. Application for examination.	1399. Penalties for violation of chapter.
1392. Qualifications of licentiates and assistants.	1400. Duty of county attorneys.

Note: The act of 1905, contained in this chapter, expressly repealed Rev. St. 1887, Secs. 1282-1297, and Laws 1888-89, 13, on the same subject.

Constitution of Board of Pharmacy.

Sec. 1385. The Board of Pharmacy shall consist of three persons licensed as pharmacists and actively engaged in the practice of pharmacy within this State, who shall be appointed by the Governor, and who shall hold their office for a period of three years from the date of their appointment, the term of one member expiring and a new member being appointed each year: *Provided*, That the members of the present board shall continue to hold office until the expiration of their respective terms.

Historical: Laws 1905, 319, Sec. 7. Re-written by omitting the provision relating to the first board, and preserv-

ing the terms of office of the present members.

Officers and Meetings of Board.

Sec. 1386. Annually the Board of Pharmacy shall organize by the election of a president and secretary, both of whom shall be members of the board, who shall hold their offices for a period of one year, and until their successors have been elected and qualified. The secre-

tary shall give a bond in such sum as may be prescribed by the board, conditioned upon the discharge of his duties according to law.

The president and secretary shall have power to administer oaths in all matters pertaining to the examination and registration of pharmacists and assistant pharmacists. The board shall hold two meetings each year, at such times and places as may be provided by law, for the examination of candidates, and for the discharge of such other business as may legally come before it, and such other additional meetings as may be necessary. A majority of the board shall constitute a quorum to transact business.

Historical: Laws 1905, 319, Sec. 8, | of Section 9, relating to the administration of oaths and quorum.
combined with the last two sentences

Records and Reports.

Sec. 1387. The board shall keep a record of its proceedings, and a register of all persons to whom certificates of license as pharmacists and assistant pharmacists, and permits, have been issued, and of all renewals thereof. The books and register of the board, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be accepted as competent evidence in all courts in this State. The Board of Pharmacy shall make, annually, to the Governor of the State, a written report of its proceedings, and of its receipts and disbursements under this chapter, and of all persons licensed to practice as pharmacists and assistant pharmacists in this State.

Historical: Laws 1905, 319, Sec. 9. | are transferred to the preceding section.
Omitting the last two sections, which

Compensation of Members of Board.

Sec. 1388. There shall be no money appropriated from the funds of the State for the purposes of carrying out the provisions of this chapter, and the members of the Board of Pharmacy shall look entirely to fees arising from licenses and permits for their compensation, which shall in no case exceed five dollars per day for each member, for the time actually spent in the discharge of his duty as a member of said board, together with ten cents per mile for each mile actually traveled both going to and coming from the meetings of the board.

Historical: Laws 1905, 319, Sec. 10.

Fees.

Sec. 1389. The Board of Pharmacy shall be entitled to charge and collect the following fees:

For licensing those already qualified under the now existing laws, five dollars;

For examining an applicant for license as pharmacist, fifteen dollars;

For examining an applicant for license as assistant pharmacist, ten dollars;

For renewal of licenses, one dollar, payable annually;

For issuing permit to an assistant pharmacist to conduct a drug store in village of not more than two hundred inhabitants, five dollars.

All fees must be paid before the applicant shall be admitted to examination or his name placed upon the register of pharmacists, or before any license or permit or renewal thereof may be issued by the board.

Historical: Laws 1905, 319, Sec. 11.

Drugs to Be Sold by Registered Pharmacists.

Sec. 1390. It shall be unlawful for any person not a registered pharmacist, within the meaning of this chapter, to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business, for the retailing, compounding or dispensing of any drugs, chemicals or poisons, except as hereinafter provided; or for the compounding of physicians' prescriptions; or to keep exposed for sale at retail any drugs, chemicals or poisons; or for any person not licensed as a pharmacist or assistant pharmacist, within the meaning of this chapter, to compound, dispense, or sell at retail, any drug, chemical, poison or pharmaceutical preparation, upon the prescription of a physician or otherwise; or to compound physicians' prescriptions, except under the supervision of a person licensed as a pharmacist under this chapter. And it shall be unlawful for any owner or manager of a pharmacy, drug store or other place of business, to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail, any drug or medicine or poison except as an aid to or under the supervision of a person licensed as a pharmacist or assistant pharmacist: *Provided, however,* That nothing in this section shall be construed to interfere with a legally registered practitioner of medicine or dentist, in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper; nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the selling at retail of domestic non-poisonous remedies; nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients; nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtained antidotes: *Provided,* Nothing in this chapter shall be construed to apply to the manufacture or sale of proprietary or patent medicines: *Provided, further,* That in any village of not more than two hundred inhabitants, where there is no person licensed as a pharmacist within less than two miles of such village, the Board of Pharmacy may grant to any person who is licensed as assistant pharmacist, a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and determine when the population of the village for which such permit was granted shall become greater than two hundred: And, *Provided,* also, That this chapter shall not apply to dealers in general merchandise in a city or rural district where there is no person licensed as a pharmacist or assistant pharmacist. All

such drugs and remedies authorized to be sold by general merchandise stores shall be sold in original packages, properly labeled over the name of a registered pharmacist of this or some other State. Within the meaning of this chapter rural districts are places of not more than one hundred inhabitants.

Historical: Laws 1905, 319, Sec. 1.

Application for Examination.

Sec. 1391. Every person who shall hereafter desire to be licensed as a pharmacist or assistant pharmacist, shall file with the secretary of the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which he studied, and the time spent in the study of, the science and art of pharmacy, and the experience in compounding physicians' prescriptions which the applicant has had under the direction of legally qualified pharmacists; and shall appear at a time and place designated by the Board of Pharmacy, and submit to an examination as to his qualifications for registration under this chapter, as pharmacist or assistant pharmacist.

Historical: Laws 1905, 319, Sec. 2. Omitting the first two sentences, which provided for the licensing of persons engaged in the practice of pharmacy at the time of the passage of the act. As the act has been in effect for over

three years, and Sec. 4 (Sec. 1393 post) limits the duration of a license to two years, and Section 6 (Sec. 1395 post) avoids licenses not renewed written sixty days from their expiration, the omitted sentences are obsolete.

Qualifications of Licentiates and Assistants.

Sec. 1392. In order to be licensed as a pharmacist, within the meaning of this chapter, an applicant shall not be less than twenty-one years of age, and he shall present to the Board of Pharmacy satisfactory evidence that he has sufficient preliminary education, and that he has had four years' experience in pharmacy under the instruction of a licensed pharmacist; and he shall also pass a satisfactory examination by or under the direction of the Board of Pharmacy.

In order to be licensed as an assistant pharmacist, within the meaning of this chapter, an applicant shall not be less than eighteen years of age, and shall have had not less than two years' experience in pharmacy under the instruction of a licensed pharmacist. He shall also have had sufficient preliminary education, and shall pass a satisfactory examination by or under the direction of the Board of Pharmacy: *Provided, however,* That in case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at such school or college of pharmacy shall be deducted from the time of experience required of pharmacists and assistant pharmacists, but in no case shall less than two years' experience be required for registration as a licensed pharmacist.

Historical: Laws 1905, 319, Sec. 3.

Issuance and Refusal of Licenses.

Sec. 1393. If the applicant for license as pharmacist or assistant pharmacist has complied with all the provisions of the two preceding sections, the Board of Pharmacy shall enroll his name upon the regis-

ter of pharmacists or assistant pharmacists, and issue to him a license which shall entitle him to practice as a pharmacist or assistant pharmacist for the period of two years from the date of said license. The Board of Pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the board may, after due notice and hearing, revoke the license for like cause, or any license which has been obtained by fraud. An appeal from the action of the board in refusing to grant or in revoking a license for such cause, may be taken to the Governor and Attorney General, the decision of which officers, either affirmative or overruling the action of the board, shall be final.

Historical: Laws 1905, 319, Sec. 4.
Omitting the last sentence relating to

patent medicines, which is appended
to Sec. 13 (Sec. 1398 post).

License of Registered Pharmacists From Other States.

Sec. 1394. The Board of Pharmacy may issue a license to pharmacists and assistant pharmacists who are registered in other States, or who are graduates of a reputable school or college of pharmacy requiring not less than a three years' course, without examination: *Provided*, That the requirements of the State are equal to the requirements of this State. Applicants for license under this section shall be required to pay the same fees as those undergoing an examination.

Historical: Laws 1905, 319, Sec. 5.

Licenses to Be Displayed: Renewal.

Sec. 1395. All licenses and permits under the provisions of this chapter, shall within thirty days of the issuance of the same, be conspicuously displayed in the place of business of the person holding the license or permit.

All licenses and permits must be renewed within sixty days after the expiration of the same. A failure to make application for renewal within the time specified will work forfeiture of the right to renewal under this chapter, and will subject the applicant to examination and the payment of the original fee.

Historical: Laws 1905, 319, Sec. 6.

Unauthorized Persons Not to Use Title of Pharmacist.

Sec. 1396. It shall be unlawful for any person, not legally licensed as a pharmacist, to take, use or exhibit the title of pharmacist or the title of druggist or apothecary, or any other title or description of like import; and it shall be unlawful for any person, not legally licensed as an assistant pharmacist, to take, use or exhibit the title of assistant pharmacist, or any other title or description of like import.

Historical: Laws 1905, 319, Sec. 14.

Exemption From Jury Service.

Sec. 1397. All persons licensed under this chapter as pharmacists or assistant pharmacists, and actively engaged in the practice of

their profession, shall be free and exempt from jury duty in all courts of this State.

Historical: Laws 1905, 319, Sec. 15.

Restrictions Upon Sale of Poisons and Patent Medicines.

Sec. 1398. It shall be unlawful for any person to sell or deliver to any minor under sixteen years of age, except upon the written order of an adult, or to sell to or deliver to any person, any of the following described substances, or any poisonous compounds or preparations thereof, to-wit: Arsenic, corrosive sublimate, hydro-cyanic acid, opium, morphine, strychnine, cocaine, or aconite, except in the manner following: It shall first be learned, by due inquiry, that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle or other package shall be plainly labeled with the name of the substance, the word "poison," and the name of the person or firm dispensing the substance. Before a delivery shall be made of any of the foregoing substances, there shall be recorded, in a book kept for that purpose, the name of the article, the quantity delivered, the purpose for which it is alleged to be used, the date of delivery, the name and address of the purchaser and the name of the dispenser, which book shall be preserved for at least one year and shall at all times be open to inspection by the proper officers of the law: *Provided, however,* That the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: And, *Provided, also,* That the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale; but the box, bottle or other package containing such substance when sold at wholesale shall be properly labeled with the name of the substance, the word "poison," and the name and address of the manufacturer or wholesaler.

The board shall have the power to examine any patent or proprietary medicine, and condemn the same in case it is found to contain deleterious matter which might produce an effect other than that claimed by such patent or proprietary medicine.

Historical: Laws 1905, 319, Sec. 13, and the last sentence, relating to pat-

ent medicines, of Sec. 4 (Sec. 1393 ante).

Penalties for Violations of Chapter.

Sec. 1399. Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy or other place of business for the compounding, dispensing, or sale at retail of any drugs, medicines or poisons, or for the compounding of physician's prescriptions, contrary to the provisions of Section 1390, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars; and each week such drug store or pharmacy or other place of business is so unlawfully conducted, shall be held to constitute a separate and distinct offense.

Whoever, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail, any drug, medicine,

poison or pharmaceutical preparation, either upon a physicians' prescription or otherwise, and whoever, being the owner or manager of a drug store, pharmacy or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail or compound any drug, medicine, poison or physicians' prescription, contrary to the provisions of Section 1390, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars.

Any license or permit or renewal thereof obtained through fraud or by any false or fraudulent representation shall be void and of no effect in law. Any person who shall make any false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars; and any person who shall wilfully make a false affidavit for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as in other cases of perjury.

Whoever, being the holder of any license or permit granted under this chapter, shall fail to expose such license or permit, or any renewal thereof, in a conspicuous position in the place of business to which such permit relates, or in which the holder of any license issued under the provisions of this chapter is employed, contrary to the provisions of Section 1395, shall, upon conviction thereof, be fined not less than five dollars nor more than twenty-five dollars, and each week that such license, permit or renewal shall not be exposed shall be held to constitute a separate and distinct offense. And whoever, being the holder of any license or permit granted under this chapter, shall after the expiration of such license or permit, and without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of Section 1395, shall, upon conviction thereof, be fined not less than five dollars nor more than twenty-five dollars.

Whoever shall sell or deliver to any person any poisonous substance specified in Section 1398, without labeling the same and recording the delivery thereof in the manner prescribed in said Section 1398, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars.

Whoever, not being legally licensed as a pharmacist, shall take, use or exhibit the title of pharmacist, licensed or registered pharmacist, druggist, apothecary, or any other title of similar import, contrary to the provisions of Section 1396, and whoever, not being legally licensed as an assistant pharmacist, shall take, use or exhibit the title of assistant pharmacist, or any other title of similar import, contrary to the provisions of said Section 1396, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars.

Duty of County Attorneys.

Sec. 1400. It shall be the duty of the county attorneys to take charge of and prosecute any violation of any of the provisions of this chapter.

Historical: Laws 1905, 319, Sec. 12.

CHAPTER 22.**LICENSED SURVEYORS.****Section**

- 1401. Board of Examiners.
- 1402. Application for license.
- 1403. Issuance of license.
- 1404. License without examination.
- 1405. Duration of license.
- 1406. Revocation of license.

Section

- 1407. Care of papers.
- 1408. Duties in making surveys.
- 1409. Surveyors may administer oaths.
- 1410. Legal survey of land.

Board of Examiners.

Sec. 1401. Every odd numbered year the Governor shall appoint, for the term of two years, two competent engineers, who, together with the State Engineer, shall constitute an examining board, who shall serve without compensation. The State Engineer shall ex-officio be the chairman of such board, which shall hold meetings at such times and places as may be designated by the State Engineer.

Historical: Laws 1903, 81, Sec. 4. Omitting the provision for the appointment of the first board and changing "every two years" to "every

odd numbered year" so as to fix the year of appointment.

California Legislation: See Henning's Gen. Laws, 661, Sec. 5.

Application for License.

Sec. 1402. Every person desiring to become a licensed land surveyor in this State, must present to the State Engineer a certificate that he is a practical surveyor and a person of good moral character; also a certificate signed by the Board of Examining Surveyors, provided for in the preceding section, which certificate shall set forth that the person named therein is, in the opinion of the person signing the same, a fit and competent person to receive a license as land surveyor, together with his oath to support the Constitution of the State and of the United States, and to faithfully discharge the duties of a land surveyor as defined in this chapter.

Historical: Laws 1903, 81, Sec. 1.

California Legislation: Similar: Henning's Gen. Laws, 660, Sec. 1.

Issuance of License.

Sec. 1403. Upon the receipt of such certificate and oath, and upon his filing a good and sufficient bond in the sum of five hundred dollars for the faithful performance of his duties as land surveyor, the State Engineer shall issue to such applicant a license, upon payment of a fee of five dollars, which fee shall be turned into the State Treasury. The license shall set forth the fact that he is a surveyor and authorized to practice his profession within this State.

Historical: Laws 1903, 81, Sec. 2.

California Legislation: See Henning's Gen. Laws, 660, Sec. 2.

License Without Examination.

Sec. 1404. All persons residing in this State and who were engaged in the actual practice of land surveying prior to the sixth day of May, 1903, shall be licensed, without examination, to continue such practice, upon filing with the State Engineer an affidavit, stating his residence and qualifications, accompanied by the fee and bond provided for in the preceding section.

Historical: Laws 1903, 81, Sec. 11. Section 10 declared county surveyors in office at the time of the passage of the act to be licensed surveyors until the expiration of their terms. Those terms having since expired, that section is obsolete and is omitted. "Sixth day of May, 1903," inserted for "passage of

this act." The act contained no emergency clause, and became effective May 6, 1903. This section would be obsolete except for the fact that the act prescribed no time within which surveyors should apply for their licenses.

Duration of License.

Sec. 1405. Surveyor's licenses, issued in accordance with this chapter, shall remain in force until revoked for cause, as hereinafter provided.

Historical: Laws 1903, 81, Sec. 5.

California Legislation: Same: Henning's Gen. Laws, 661, Sec. 8.

Revocation of License.

Sec. 1406. Upon failure of any licensed surveyor to comply with the requirements of this chapter, and the furnishing of satisfactory proof of such fact, the State Engineer must revoke his license, and no license shall be issued to him within one year from such revocation.

Historical: Laws 1903, 81, Sec. 8.

California Legislation: Similar in

part: Henning's Gen. Laws, 662, Sec. 13.

Care of Papers.

Sec. 1407. All papers received by the State Engineer on application for licenses, shall be kept on file in his office, and a proper index and record thereof shall be kept by him, and he shall keep a list of all licensed land surveyors.

Historical: Laws 1903, 81, Sec. 3.

California Legislation: Similar in part: Henning's Gen. Laws, 660, Sec. 4.

Duties in Making Surveys.

Sec. 1408. Every land surveyor is hereby authorized to make surveys relating to the sale or subdivision of lands, the retracing or establishing of property or boundary lines, public roads, streets, alleys or trails; and it shall be the duty of each surveyor, whenever making any such survey except those relating to the retracing or subdivision of cemetery or town lots, whether the survey be made for private persons, corporations, cities or counties, to set permanent and reliable monuments; and such monuments must be permanently marked.

Historical: Laws 1903, 81, Sec. 7.

Surveyors May Administer Oaths.

Sec. 1409. Every licensed surveyor is authorized to administer

and certify oaths, when it becomes necessary to take testimony to identify or establish old or lost corners, or to perpetuate a corner that is in a perishable condition, or whenever the importance of the survey makes it desirable, and to administer oaths to assistants for the faithful performance of duty. A record of such oaths shall be kept as part of the field notes of the survey.

Historical: Laws 1903, 81, Sec. 6. The word "and" is inserted after "desirable." The section as printed and as found in the enrolled bill had a semicolon at that place, and while the insertion possibly changes the meaning of the section, it is thought that it only makes it clear. The section was

ambiguous as it stood. The words "to assistants" are transposed from their original position after "duty."

California Legislation: Similar: Henning's Gen. Laws, 661, Sec. 9.

Legal Survey of Land.

Sec. 1410. No survey of land, or plat or subdivision shall be legal after June 1, 1903, unless made by a licensed surveyor.

All surveys made under the authority of the State, or of any county, town, city or village within the State, must be performed by a licensed surveyor.

Historical: Laws 1903, 81, Secs. 9, 12.

CHAPTER 23.

ABSTRACTORS OF TITLES.

Section

- 1411. Abstractors to give bond.
- 1412. Certificate of abstractor: Effect.
- 1413. Use of abstract as evidence: Service of copy.

Section

- 1414. Duration of bond: Additional security.
- 1415. Appeal from probate judge.
- 1416. Register of Abstractors: Fee for certificate.

Abstractors to Give Bond.

Sec. 1411. It shall be a misdemeanor for any person or persons to engage in the business of compiling abstracts of title to real estate, in the State of Idaho, and demand and receive pay for the same, without first filing in the office of the probate judge of the county in which such business is conducted, a bond to the State of Idaho, in the penal sum of ten thousand dollars, with not less than three sureties, residents of the county, conditioned for the payment by such abstractors of any or all damages that may accrue to any party or parties, by reason of any error, deficiency or mistake in any abstract or certificate of title, made and issued by such person or persons.

Historical: Laws 1897, 92, Sec. 1; re-enacted Laws 1899, 314, Sec. 1; amended Laws 1899, 456, Sec. 1.

Comparative Legislation: See Neb. Cobby's An. St. Vol. 2, Sec. 10279.

Certificate of Abstractor: Effect.

Sec. 1412. When any abstractor shall have duly filed his bond as above provided, he shall be entitled to receive a certificate from such probate judge, that said bond has been by him duly approved and filed for record, which certificate shall be valid so long as such abstractor shall maintain his surety upon the bonds as herein provided

for unimpaired, and the possession of such valid certificate at the date of issuance of any abstract shall entitle such abstract of title to real estate, certified to and issued by such abstractor, to be received in all courts as prima facie evidence of the existence of the record of deeds, mortgages and other instruments, conveyances, or liens, affecting the real estate mentioned in such abstract, and that such record is as described in said abstract of title.

Historical: Laws 1899, 314, Sec. 3;
re-enacting Laws 1897, 92, Sec. 3.

Comparative Legislation: See Neb.
Cobbey's An. St. Vol. 2, Sec. 10280.

Use of Abstract as Evidence: Service of Copy.

Sec. 1413. Any party to a civil action, who may desire to use in evidence at the trial thereof, any abstract of title to real estate as herein provided, shall furnish to the opposing party or his attorneys a copy of such abstract at least three days before the trial of said action, and in case such real estate be not in the county where such trial is to take place, then such copy shall be furnished to the opposing party or his attorney, in time to allow a sufficient number of days for such opposing party to proceed, by the usual route of travel, to the county seat of the county where such real estate may be situated and return to the place of trial, in addition to the three days for preparation above provided for.

Historical: Laws 1899, 314, Sec. 4;
re-enacting Laws 1897, 92, Sec. 4. "In
time" inserted before "to allow," to
make the section read more smoothly.

Comparative Legislation: See Neb.
Cobbey's An. St. Vol. 2, Sec. 10281.

Duration of Bond: Additional Security.

Sec. 1414. The bond herein provided for may run during the continuance of said person or persons in said abstract business, not to exceed five years, and the probate judge of the county where the bond herein provided for may be filed, may, at any time upon complaint of any owner of real estate in his county, require such abstractor, upon ten days' notice, to give additional security upon said bond, and show cause why the same should not be declared invalid, and the certificate thereof recalled and annulled, and if within such time the additional security, to be approved by said probate judge, be not furnished, and there is no sufficient reason to show to the judge why the same should not be required, the said bond shall be declared invalid, and the certificate thereof recalled and cancelled.

Historical: Laws 1899, 314, Sec. 5;
re-enacting Laws 1897, 92, Sec. 5.

Comparative Legislation: See Neb.
Cobbey's An. St. Vol. 2 Sec. 10282.

Appeal From Probate Judge.

Sec. 1415. The abstractor or complainant may have an appeal to the District Court from such decision of the probate judge, by preserving the evidence taken at the hearing which shall be certified up by such judge, and such appeal shall be summarily decided by the court upon such evidence, and the cost of such appeal, including the furnishing of such evidence, shall be adjudged against the defeated party.

Historical: Laws 1899, 314, Sec. 6;
re-enacting Laws 1897, 92, Sec. 6.

Comparative Legislation: See Neb.
Cobbey's An. St. Vol. 2, Sec. 10283.

Register of Abstractors: Fee for Certificate.

Sec. 1416. The probate judge shall be provided with a suitable register, for entering and registering the names of all abstractors who qualify and receive a certificate, and shall be entitled to a fee of two dollars for each and every certificate so issued.

Historical: Laws 1899, 314, Sec. 2;
re-enacting Laws 1897, 92, Sec. 2.

PROTECTION AND REGULATION OF LABOR.**CHAPTER 24.****BUREAU OF IMMIGRATION, LABOR AND STATISTICS.**

Section	Section
1417. Establishment of bureau.	1422. Distribution of advertising matter.
1418. Commissioner of Immigration, Labor and Statistics.	1423. Expenses of office.
1419. Duties of Commissioner.	1424. Report of Commissioner.
1420. Same: Assistance of officers.	1425. Same: Compilation of labor statistics.
1421. Exhibits of products of State.	

Establishment of Bureau.

Sec. 1417. In conformity with the requirements of Section 1, Article 13, of the Constitution of the State of Idaho, a Bureau of Immigration, Labor and Statistics for the State is hereby established.

Historical: Laws 1899, 394, Sec. 1.

Commissioner of Immigration, Labor and Statistics.

Sec. 1418. It shall be the duty of the Governor, by and with the consent of the Senate, to appoint a competent person as Commissioner of Immigration, Labor and Statistics, who shall have charge of said bureau, and who shall hold his office for the term provided in said Article 13 of the Constitution. He shall receive a salary of eighteen hundred dollars per year, and all necessary traveling expenses not exceeding six hundred dollars per annum while traveling in the discharge of his official duties, to be paid as are the salary and fees of other State officers. Before entering upon the duties of his office, he shall take oath for the faithful discharge of the duties thereof, the same as other State officers. The Secretary of State shall provide a suitable room for the use of said bureau, and furnish the necessary fuel, light and appurtenances. All books, papers and documents in the office of said Commissioner shall be deemed public records of the State, and shall be transferred by him to his successor in office.

Historical: Laws 1899, 394, Sec. 2.
Omitting "immediately after the passage of this act."

Cross Reference: Office created and duties prescribed by Constitution: Art. 13, Sec. 1.

Duties of Commissioner.

Sec. 1419. It shall be, and is hereby made, the duty of said Commissioner to collect and compile all reliable data and information at his command, concerning the climate, soil and various resources of

the State; its agricultural, horticultural, mineral, timber and grazing lands, and industries, and the development thereof; the water courses and lakes of the State in reference to irrigation, manufacturing, mechanical and other uses; the various crop products, and the adaptability of different soils and localities for the production of different crops; the number, kinds and value of domestic animals in the State, with useful information regarding the same; the number of public schools, educational institutions, churches, charitable and fraternal organizations; health and pleasure resorts, and health statistics of the State; the number and mileage of railroads and other transportation lines; the number and capacity of irrigation canals and the lands covered by the same; the number and location of newspapers and periodicals in the State; the amount of public and school lands, and those belonging to various public institutions of the State; the wages and hours of labor, both skilled and common, and its relation to capital; and, generally, any information, which, if disseminated abroad, would tend to the development of the State by inducing population and capital to come within its borders. Said Commissioner shall also inform himself in regard to suitable locations for agricultural and horticultural colonies in the State, and use all facilities at his command for encouraging and promoting desirable enterprises of this kind. To this end he shall endeavor to secure low rates of transportation favorable to immigrants by urging the co-operation of railroads and other corporations interested in the settlement of the State. He shall also open correspondence with, and answer any and all inquiries from, those seeking information in regard to the resources of the State.

Historical: Laws 1899, 394, Sec. 3.

Same: Assistance of Officers.

Sec. 1420. In order to enable said Commissioner to secure the above required information, he is hereby clothed with the power to call upon officers of the State, county assessors, superintendents of public instruction, and other officers, for such information as he may desire and deem valuable in his department.

Historical: Laws 1899, 394, Sec. 4.

Exhibits of Products of State.

Sec. 1421. It shall be the duty of the Commissioner to keep in his office for exhibit such samples of the productions of the State, including grains, grasses, fruits, vegetables, minerals, manufactured articles and other products, as may be contributed by towns and counties, without expense to the State, the same to be arranged so that each town or county shall receive due credit therefor. He shall, whenever practicable, organize and encourage local exhibits at such points as would tend to advertise the resources of the State, and, whenever funds are available for such purposes, shall also make, or cause to be made, exhibits of the products and industries of the State, at such industrial and international exhibitions in other States, as the Governor shall direct.

Historical: Laws 1899, 394, Sec. 5.

Distribution of Advertising Matter.

Sec. 1422. Said Commissioner shall cause to be printed and distributed such pamphlets, circulars, cards and maps, and shall publish, from time to time, through the public press, such information as, in the judgment of said Commissioner, would tend to carry out the objects sought by this chapter, and result in the largest possible benefit to the State.

Historical: Laws 1899, 394, Sec. 6.

Expenses of Office.

Sec. 1423. Said Commissioner shall receive the salary and mileage heretofore provided for, and be allowed the actual cost of the printing and supplies necessary for the publication and distribution of the matter heretofore mentioned: *Provided*, That the allowance for such printing and supplies shall not exceed the aggregate sum of two thousand dollars in any one year.

Historical: Laws 1899, 394, Sec. 7.

Report of Commissioner.

Sec. 1424. The Commissioner shall, on or before the first day of December in each year, transmit to the Governor a full and complete report of the doings of his office, including a tabulated statement of all statistics accumulated in his office, and a detailed and itemized account of the expenses thereof.

Historical: Laws 1899, 394, Sec. 8. | conform to Laws 1903, 149 (Codes, Sec. 279).
"December" inserted for "January" to

Same: Compilation of Labor Statistics.

Sec. 1425. The Commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity, and assort, systematize, print and present in annual reports to the Governor, on or before the first day in December of each year, statistical details relating to all departments of labor in this State, including the penal institutions thereof, particularly concerning hours of labor, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics, and apprentices, wages earned, the savings from the same, the culture, moral and mental, with age and sex, of laborers employed, and number and character of accidents, the sanitary condition of institutions and other places where labor is employed, as well as the influence of the several kinds of labor, and the use of intoxicating liquors upon the health, and mental condition of the laborer, the restrictions, if any, which are put upon apprentices when indentured, the proportion of married laborers and mechanics who live in rented houses, with the annual rental of the same, the average number of members in the families of married laborers and mechanics, the value of property owned by laborers and mechanics, together with the value of property owned by such laborers or mechanics (if foreign born), upon their arrival in this country, and the length of time they have resided here, the subject of co-operation, strikes, or other labor diffi-

culties, trades unions, and other labor organizations, and their effects upon labor and capital, with such other matter relating to the commercial, industrial, and sanitary condition of the laboring classes, and permanent prosperity of the respective industries of the State, as such bureau may be able to gather, accompanied by such recommendations relating thereto, as the bureau shall deem proper.

Historical: Laws 1899, 394, Sec. 9. | for the reasons stated in the note to
"December" inserted for "January" | the preceding section.

CHAPTER 25.
LABOR COMMISSION AND ARBITRATION.

Section	Section
1426. Constitution of commission.	1434. Award.
1427. Appointment and qualifications of Commissioners.	1435. Record of proceedings: Disobedience to award: Procedure.
1428. Seal: Appointment of secretary.	1436. Rules governing proceedings.
1429. Duties of commissioners in case of strike.	1437. Application for arbitration.
1430. Arbitration: Constitution of board.	1438. Precedence of arbitration proceedings.
1431. Agreement for arbitration.	1439. Investigations by commission.
1432. Appointment of Commissioner pro tem.	1440. Report of investigation.
1433. Oath of arbitrators: Nature of proceedings.	1441. Confidential communications.
	1442. Compensation of Commissioners.

Note: For prior legislation on this subject, see Laws 1897, 141; Laws 1899, 319.

Constitution of Commission.

Sec. 1426. There shall be and is hereby created, a commission to be composed of two electors of the State, which shall be designated the Labor Commission, and which shall be charged with the duties, and vested with the powers, hereinafter enumerated.

Historical: Laws 1901, 66, Sec. 1: | establish Boards of Arbitration: Const.
Cross Reference: Legislature may | Art. 13, Sec. 7.

Appointment and Qualifications of Commissioners.

Sec. 1427. The members of said commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold office for two years and until their successors shall have been appointed and qualified. One of said commissioners shall have been, for not less than six years of his life, an employee, for wages, in some department of industry, in which it is usual to employ a number of persons under single direction and control, and shall be, at the time of his appointment, affiliated with the labor interest as distinguished from the capitalist or employing interest.

The other of said commissioners shall have been, for not less than six years, an employer of labor, for wages, in some department of industry in which it is usual to employ a number of persons under single direction and control, and shall be, at the time of his appointment, affiliated with the employing interest, as distinguished from the labor interest. Neither of said commissioners shall be less than twenty-five years of age, and they shall not be members of the same

political party. A political party within the meaning of this section, shall be held to mean one or more parties supporting one ticket or member of a fusion. Neither of the commissioners shall hold any other State, county or city office in Idaho, during the term of office for which they shall be appointed. Each of said commissioners shall take and subscribe an oath, to be indorsed upon his commission, to the effect that he will punctually, honestly and faithfully discharge his duties as such commissioner.

Historical: Laws 1901, 66, Sec. 2.

Seal: Appointment of Secretary.

Sec. 1428. Such commission shall have a seal and shall not be required to leave their personal labor or business, except to perform the duties devolving upon them as members of the labor commission. When necessary, they may appoint a secretary, who shall be a skillful stenographer and typewriter, and who shall receive a salary of four dollars per day and traveling expenses for every day spent in the discharge of duty under the direction of the commission.

Historical: Laws 1901, 66, Sec. 3.

Duties of Commissioners in Case of Strike.

Sec. 1429. It shall be the duty of said commissioners, upon receiving authentic information, in any manner, of the existence of any strike, lockout, or other labor complication in this State, affecting the labor or employment of fifty persons or more, to go to the place where such complication exists, put themselves into communication with the parties to the controversy, and offer their services as mediators between them: *Provided*, That in all cases where less than fifty persons are on strike or lockout, the commission may, in their discretion, act as though such number of strikers consisted of fifty or more persons. If they shall not succeed in effecting an amicable adjustment of the controversy in that way, they shall endeavor to induce the parties to submit their differences to arbitration, either under the provisions of this chapter or otherwise as they may elect.

Historical: Laws 1901, 66, Sec. 4.

Arbitration: Constitution of Board.

Sec. 1430. For the purpose of arbitration under this chapter, the labor commissioners and the Judge of the District Court of the district in which the business in relation to which the controversy shall arise, shall have been carried on, shall constitute a board of arbitrators, to which shall be added, if the parties so agree, two other members, one to be named by the employer, and the other by the employees in the arbitration agreement. If the parties to the controversy are a railroad company, and the employees of the company engaged in the running of trains, any terminal within this State, of the road, or any division thereof, may be taken and treated as the location of the business within the terms of this section, for the purpose of giving jurisdiction to the Judge of the District Court, to act as a member of the board of arbitration.

Historical: Laws 1901, 66, Sec. 5.

Agreement for Arbitration

Sec. 1431. An agreement to enter into arbitration under this chapter, shall be in writing and shall state the issue to be submitted and decided, and shall have the effect of an agreement, by the parties, to abide by, and perform the award. Such an agreement may be signed by the employer, as an individual, firm or corporation, as the case may be, and execution of the agreement, in the name of the employer, by any agent or representative of such employer, then and there in control or management of the business, or department of business, in relation to which the controversy shall have arisen, shall bind the employer. On the part of the employees the agreement may be signed by them, in their own person, not less than two-thirds of those concerned in the controversy, signing, or it may be signed by a committee by them appointed. Such committee may be created by election at a meeting of the employees concerned in the controversy, at which not less than two-thirds of such employees shall be present, which election, and the fact of the presence of the required number of employees at the meeting, shall be evidenced by the affidavit of the chairman and secretary of such meeting, attached to the arbitration agreement. If the employees concerned in the controversy, or any of them, shall be members of any labor union or working men's society, they may be represented in the execution of said arbitration agreement by officers or committeemen of the union or society designated by it, in any manner conformable to its usual methods of transacting business, and others of the employees represented by committee as hereinbefore provided.

Historical: Laws 1901, 66, Sec. 6.

Appointment of Commissioner Pro Tem.

Sec. 1432. If upon any occasion calling for the presence and intervention of the labor commissioners under this chapter, one of said commissioners shall be present and the other absent, the Judge of the District Court of the district in which the dispute shall have arisen, as defined in Section 1430, shall, upon the application of the commissioner present, appoint a commissioner pro tem, in the place of the absent commissioner, and such commissioner pro tem shall exercise all the powers of a commissioner under this chapter, until the termination of the duties of the commission with respect to the particular controversy upon the occasion of which the appointment shall have been made, and shall receive the same pay and allowances provided by this chapter for the other commissioners. Such commissioner pro tem shall represent and be affiliated with the same interests as the absent commissioner.

Historical: Laws 1901, 66, Sec. 7.

Oath of Arbitrators: Nature of Proceedings.

Sec. 1433. Before entering upon their duties, the arbitrators shall take and subscribe an oath or affirmation to the effect that they will honestly and impartially perform their duties as arbitrators, and a just and fair award render, to the best of their ability. The sitting of the arbitrators shall be in the court room of the District Court or such other place as shall be provided by the county commissioners

of the county in which the hearing is had. The District Judge shall be the presiding member of the board. He shall have power to issue subpoenas for witnesses who do not appear voluntarily, directed to the sheriff of the county, whose duty it shall be to serve the same without delay. He shall have power to administer oaths and affirmations to witnesses, enforce order, and direct and control the examinations. The proceedings shall be informal in character, but in general accordance with the practice governing the District Courts in the trial of civil cases. All questions of practice, or questions relating to the admission of evidence, shall be decided by the presiding member of the board summarily and without extended argument. The sittings shall be open and public. If five members are sitting as such board, three members of the board, agreeing, shall have power to make an award, otherwise two. The secretary of the commission shall attend the sitting and make a record of the proceedings in shorthand, but shall transcribe so much thereof only as the commission shall direct.

Historical: Laws 1901, 66, Sec. 8.

Award.

Sec. 1434. The arbitrators shall make their award in writing and deliver the same, with the arbitration agreement and their oath as arbitrators, to the clerk of the District Court of the judicial district in which the hearing was had, and deliver a copy of the award to the employer and a copy to the first signer of the arbitration agreement on the part of the employees. A copy of all the papers shall be preserved by the commission.

Historical: Laws 1901, 66, Sec. 9.

Record of Proceedings: Disobedience to Award: Procedure.

Sec. 1435. The clerk of the District Court shall record the papers delivered to him, as directed in the last preceding section, in the order book of the District Court. Any person, who was a party to the arbitration proceedings, may present to the District Court of the county in which the hearing was had, or the judge thereof, in vacation, a verified petition referring to the proceedings and the record of them, in the order book, and showing that said award has not been complied with, stating by whom and in what respect it has been disobeyed. Thereupon the court or judge thereof in vacation, shall grant a rule against the party or parties so charged, to show cause within five days why said award has not been obeyed, which shall be served by the sheriff as other process. Upon return made to the rule, the judge, or court if in session, shall hear and determine the questions presented, and make such order or orders, directed to the parties before him *in personam*, as shall give just effect to the award. Disobedience by any party to such proceedings of any order so made, shall be deemed a contempt of the court, and may be punished accordingly. But such punishment shall not extend to imprisonment except in case of wilful disobedience. In all proceedings under this section, the award shall be regarded as presumptively binding upon the employer and all employees who were parties to the controversy submitted to arbitration, which presumption shall be overcome only by proof of dissent from the submission delivered

to the arbitrators, or one of them, in writing, before the commencement of the hearing.

Historical: Laws 1901, 66, Sec. 10.

Rules Governing Proceedings.

Sec. 1436. The labor commission, with the advice and assistance of the Attorney General of the State, which he is hereby required to render, may make rules and regulations respecting proceedings in arbitration under this chapter, not inconsistent with this chapter or the law, including forms, and cause the same to be printed and furnished to all persons applying therefor, and all arbitration proceedings under this chapter shall thereafter conform to such rules and regulations.

Historical: Laws 1901, 66, Sec. 11.

Application for Arbitration.

Sec. 1437. Any employer and his employees, not less than twenty-five in number, between whom differences exist which have not resulted in any open rupture or strike, may, of their own motion, apply to the labor commission for arbitration of their differences, and upon the execution of an arbitration agreement, as hereinbefore provided, a board of arbitrators shall be organized in the manner hereinbefore provided, and the arbitration shall take place and the award be rendered, recorded and enforced, in the same manner as in arbitrations under the provisions found in the preceding sections of this chapter.

Historical: Laws 1901, 66, Sec. 12.

Precedence of Arbitration Proceedings.

Sec. 1438. In all cases arising under this chapter, requiring the attendance of a Judge of the District Court as a member of the arbitration board, such duty shall have precedence over any other business pending in his court, and if necessary for prompt transaction of such other business, it shall be his duty to appoint the District Judge of an adjoining district to sit in the District Court in his place during the pendency of such arbitration, and such appointee shall receive the same compensation for his services as is now allowed by law to judges appointed to sit in case of change of judge in civil actions. In case the Judge of the District Court, whose duty it shall become under this chapter to sit upon any board of arbitrators shall be at the time actually engaged in a trial which cannot be interrupted without loss and injury to the parties, and which will, in his opinion, continue for more than three days to come, or is disabled from acting by sickness or otherwise, it shall be the duty of such judge to call in and appoint the District Judge of an adjoining district, to sit upon such board of arbitrators, and such appointed judge shall have the same power, and perform the same duties, as member of the Board of Arbitration, as are by this chapter vested in and charged upon the District Judge regularly sitting, and he shall receive the same compensation, now provided by law, to a judge sitting by appointment, upon a change of judge in civil cases, to be paid in the same way.

Historical: Laws 1901, 66, Sec. 13.

Investigations by Commission.

Sec. 1439. If the parties to any such labor controversy as is defined in Section 1429, shall have failed, at the end of five days after the first communication of said labor commission to them, to adjust their differences amicably, or to agree to submit the same to arbitration, it shall be the duty of the labor commission to proceed at once to investigate the facts attending the disagreement. In this investigation the commission shall be entitled, upon request, to the presence and assistance of the Attorney General of the State, in person or by deputy, whose duty it is hereby made to attend, without delay, upon request by letter or telegram from the commission. For the purpose of such investigation, the commissioners shall have power to issue subpoenas and each of the commissioners shall have power to administer oaths and affirmations. Such subpoena shall be under seal of the commission, and signed by the secretary of the commission, or a member of it, and shall command the attendance of the person or persons named in it, at a time and place named, which subpoena may be served and returned as other process by any sheriff or constable in the State. In case of disobedience of any such subpoena or the refusal of any witness to testify, the District Court having jurisdiction, or the Judge thereof during vacation, shall, upon the application of the labor commission, grant a rule against the disobeying person or persons or the person refusing to testify, to show cause, forthwith, why he or they should not obey such subpoena or testify as required by the commission, or be adjudged guilty of contempt, and in such proceedings, such court, or the Judge thereof, in vacation, shall be empowered to compel obedience to such subpoena, as in the case of a subpoena issued under the order of and by the authority of the court, or to compel a witness to testify as witnesses in court are compelled to testify. But no person shall be required to attend as a witness at any place outside of the county of his residence. Witnesses called by the labor commission, under this section, shall be paid two dollars per diem fees out of the expense fund provided by this chapter, if such payment is claimed at the time of their examination.

Historical: Laws 1901, 66, Sec. 14.

Report of Investigations.

Sec. 1440. Upon the completion of the investigation authorized by the last preceding section, the labor commission shall forthwith report the facts thereby disclosed, affecting the merits of the controversy, in a brief and condensed form, to the Governor.

Historical: Laws 1901, 66, Sec. 15.

Confidential Communications.

Sec. 1441. An employer shall be entitled, in his response to the inquiries made of him by the commission in the investigation provided for in the last two preceding sections, to submit in writing to the commission a statement of any facts material to the inquiry, the publication of which would be likely to be injurious to his business, and the facts so stated shall be taken and held as confidential, and shall not be disclosed in the report or otherwise.

Historical: Laws 1901, 66, Sec. 16.

Compensation of Commissioners.

Sec. 1442. Said Commissioners shall receive a compensation of six dollars each per diem, for the time actually expended, and actual and necessary traveling and hotel expenses, while absent from home in the performance of duty, and each of the two members of the Board of Arbitration, chosen by the parties under the provisions of this chapter, shall receive the same compensation for the days occupied in service upon the board. The Attorney General or his deputy shall receive his necessary and actual traveling expenses while absent from home in the service of the commission. Such compensation and expenses shall be paid by the State Treasurer upon warrants drawn by the Auditor upon itemized and verified accounts of time spent and expenses paid. All such accounts except those of the commissioners, shall be certified as correct by the commissioners, or one of them, and the accounts of the commissioners shall be certified by the secretary of the commission. It is hereby declared to be the policy of this chapter, that the arbitrations and investigations provided for in it, shall be conducted with all reasonable promptness and dispatch, and no member of any board of arbitration shall be allowed payment for more than fifteen days' service, in any one arbitration, and no commissioner shall be allowed payment for more than ten days' service in the making of the investigation provided for in Section 1439 and sections following.

Historical: Laws 1901, 66, Sec. 17.

CHAPTER 26.

EMPLOYMENT BUREAUS.

Section	Section
1443. License from county commissioners.	1444. Same: Bond.
	1445. Same: Penalty.

License From County Commissioners.

Sec. 1443. No person or persons shall carry on, hold, or keep any labor agency, or bureau of employment, without first having obtained written permission of the county commissioners of the county wherein said agency or bureau is to be located.

Historical: Laws 1901, 131, Sec. 1. Omitting the opening words, "That	from and after the passage of this act."
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Same: Bond.

Sec. 1444. Before any person or persons shall be permitted to open, keep or conduct any labor agency or bureau of employment within the jurisdiction of said county, he shall furnish a bond with good and solvent security in favor of the chairman of said county commissioners in the full sum and amount of five thousand dollars, conditioned that he shall well and truly carry out the purposes for which said agency shall have been established, and that he shall pay all such damages which may result from his or their actions as such agent or agents, keeper or keepers of said bureau of employment, and that any one who may have been injured or damaged by said

agent or agents by any act done in furtherance of said business or by fraud or misrepresentations of said agents or keepers, shall have a right to sue for the recovery of such damages before any court of competent jurisdiction.

Historical: Laws 1901, 131, Sec. 2.

Same: Penalty.

Sec. 1445. Any one violating the provisions of this chapter shall be subject to a fine of not more than three hundred dollars, nor less than one hundred dollars, and imprisonment in the county jail for not more than ninety days, nor less than thirty days.

Historical: Laws 1901, 131, Sec. 3.

CHAPTER 27.

PROTECTION OF MECHANICS.

Section	Section
1446. Employers to make statement.	1448. Violation of chapter a misdemeanor.
1447. Same.	

Employers to Make Statement.

Sec. 1446. It shall be the duty of any person, persons, company or corporation engaged in working any mine, mines, mining premises or in developing any mining claim or claims, whether quartz or placer, or in the running of any tunnel, or in the erection or repair of any building or other structure, or in the construction of any canal, ditch, railroad, wagon road or aqueduct, in every case where mechanics or laborers are employed in or about the properties above mentioned to make, record and publish a statement under oath, setting forth the following data:

1. The name or names of the owner or owners of the mine, mines, mining claim or premises, tunnel, building, canal, ditch, railroad, wagon road, aqueduct or other structure upon which work is being done or upon which it is intended to begin work;

2. The name or names of the person, persons, company or corporation engaged in, or who contemplates engaging in, work upon any of the properties or structures mentioned herein;

3. The conditions under which said person, persons, company or corporation is prosecuting said work, whether as owner, agent, lessee, contractor, sub-contractor, contemplative purchaser or lien holder;

4. The principal office of said person, persons, company or corporation, and, if a corporation, the State or county where incorporated and the agent in this State on whom service may be had;

5. The day of the week or month when payment of the laborers, mechanics and material men will be made, and the place where said payments will be made;

6. A statement of all mortgages and liens against the property on which work is being done, with the amount of each of said incumbrances and whether or not the same is due.

Historical: Laws 1899, 365, Secs. 1, 2, re-written in combination.

Same:

Sec. 1447. Any person, persons, company or corporation who shall engage in working, developing or prospecting any mine, mines, mining claim or premises, or in running any tunnel, or in repairing or erecting any building, or in constructing any canal, ditch, railroad, wagon road, aqueduct or other structure, and shall employ any mechanics or laborers in prosecuting said work, shall, before employing said mechanics or laborers or any of them, make a statement under oath containing the data provided for in the preceding section, and file the same for record in the office of the recorder of the county in which said labor is being done, and if there be a district recorder, then also in the office of said district recorder of the district where said mechanics or laborers are employed, and to also post similar statements in his or its office, at the place where payment of wages is to be made and in a public and conspicuous place where it can be easily seen at or near the place where said mechanics or laborers are employed.

Historical: Laws 1899, 365, Secs. 3, 4, re-written in combination so as to omit the provision applicable to persons employing labor at the time of

the passage of the act, which is now obsolete, and to preserve the portions of the section now in force.

Violation of Chapter a Misdemeanor.

Sec. 1448. Any person, persons, company or corporation, or any managing agent violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not exceeding three months.

Historical: Laws 1899, 365, Sec. 5.

CHAPTER 28.

UNION LABOR AND EMPLOYMENT OF ALIENS. .

Article	Article
1. Union labels and trade marks.	3. Employment of aliens.
2. Anti-union contracts.	

ARTICLE 1.

UNION LABELS AND TRADE MARKS.

Section	Section
1449. Unlawful to counterfeit union label.	1454. Penalty for unauthorized use of label.
1450. Same: Penalty.	1455. Penalty for unauthorized use of name.
1451. Record of label.	
1452. Penalty for fraudulent record.	
1453. Injunction and damages for infringement.	

Unlawful to Counterfeit Union Label.

Sec. 1449. Whenever any person, or any association or union of working men, has heretofore adopted or used, or shall hereafter adopt or use, any label, trade mark, term, design, device or form of advertisement, for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other products of

labor, as having been made, manufactured, produced, prepared packed or put on sale, by such person, or association, or union of working men, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade mark, term, design, device or form of advertisement.

Historical: Laws 1899, 316, Sec. 1;
re-enacting Laws 1897, 123, Sec. 1.

Comparative Legislation: See Colo.
Mill's An. St. Vol. 3, Sec. 2985-1.

Same: Penalty.

Sec. 1450. Whoever counterfeits or imitates any such label, trade mark, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade mark, term, design, device or form of advertisement; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be guilty of a misdemeanor and be punished by a fine or not more than one hundred dollars, or by imprisonment for not more than three months.

Historical: Laws 1899, 316, Sec. 2;
re-enacting Laws 1897, 123, Sec. 2.

Comparative Legislation: See Colo.
Mill's An. St. Vol. 3, Sec. 2985m.

Record of Label.

Sec. 1451. Every such person, association or union, that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade mark, term, design, device or form of advertisement, as provided in Section 1449, may file the same for record in the office of the Secretary of State, by leaving two copies, counterparts or facsimiles thereof with said Secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade mark, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing on or whose behalf such label, trade mark, term, design, device, or form of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union or corporation has a right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of one dollar. Said Secretary

shall deliver to such person, association, or union, so filing or causing to be filed any such label, trade mark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association, or union may apply for, for each of which certificates said Secretary shall receive a fee of one dollar. Any such certificate of record shall, in all suits and prosecutions under this chapter, be sufficient proof of the adoption of such label, trade mark, term, design, device or form of advertisement. Said Secretary of State shall not record for any person, union, or association, any label, trade mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade mark, term, design, device or form of advertisement theretofore filed by or on behalf of any other person, union, or association.

Historical: Laws 1899, 316, Sec. 3; re-enacting Laws 1897, 123, Sec. 3.

Comparative Legislation: See Colo. Mill's An. St. Vol. 3, Sec. 2985n.

Penalty for Fraudulent Record.

Sec. 1452. Any person who shall, for himself or on behalf of any other person, association or union, procure the filing of any label, trade mark, term, design or form of advertisement in the office of the Secretary of State under the provisions of this chapter, by making any false or fraudulent representations or declarations, verbally or in writing or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by, or on behalf of, the party injured thereby, in any court having jurisdiction, and shall be guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Historical: Laws 1899, 316, Sec. 4; re-enacting Laws 1897, 123, Sec. 4.

Comparative Legislation: See Colo. Mill's An. St. Vol. 3, Sec. 2985o.

Injunction and Damages for Infringement.

Sec. 1453. Every such person, association or union adopting or using a label, trade mark, term, design, device or form of advertisement as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, and may award the complainant in any such suit damages resulting from such manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such persons, association or union, all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant to be destroyed.

Historical: Laws 1899, 316, Sec. 5; re-enacting Laws 1897, 123, Sec. 5.

Comparative Legislation: See Colo. Mill's An. St. Vol. 3, Sec. 2985p.

Penalty for Unauthorized Use of Label.

Sec. 1454. Every person who shall use or display the genuine label, trade mark, term, design, device or form of advertisement of any such person, association or union, in any manner, not being

authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months or by fine or not more than one hundred dollars. In all cases where such association or union is not incorporated, suits under this chapter may be commenced and prosecuted by an officer or members of such association or union on behalf of, and for the use of, such association or union.

Historical: Laws 1899, 316, Sec. 6;
re-enacting Laws 1897, 123, Sec. 6.

Comparative Legislation: See Colo.
Mill's An. Stat. Vol. 3, Sec. 2985q.

Penalty for Unauthorized Use of Name.

Sec. 1455. Any person or persons who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars.

Historical: Laws 1899, 316, Sec. 7;
re-enacted Laws 1897, 123, Sec. 7.

Comparative Legislation: See Colo.
Mill's An. Stat. Vol. 3, Sec. 2985r.

ARTICLE 2. ANTI-UNION CONTRACTS.

Section

1456. Anti-union contracts prohibited.

Anti-Union Contracts Prohibited.

Sec. 1456. It shall be unlawful for any person, firm or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization. Any person or persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty not more than three hundred dollars, or be imprisoned in the county jail for not more than six months, or shall be punished by both such fine and imprisonment.

Historical: Laws 1899, 221, Secs. 1,
2; re-enacting Laws 1893, 152, Secs. 1,
2. "Shall be punished" inserted before

"by both such fine and imprisonment,"
to express the sense.

ARTICLE 3. EMPLOYMENT OF ALIENS.

Section

1457. Employment on public works prohibited.

1458. Counties, cities and corporations not to employ aliens.

Section

1459. Discharge of alien employee.

1460. Same: Refusal to discharge.

Employment on Public Works Prohibited.

Sec. 1457. No person not a citizen of the United States, or who has not declared his intention to become such, or who is not eligible to become such, shall be employed upon any State or municipal works;

nor shall any such person be employed by any contractor to work on any public works of the State or any municipality; *Provided*, That any State prisoner may be employed within the State Prison grounds and as provided in Section 3, Article 13, of the constitution. Any person who shall violate any of the provisions of this section, on conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each person so employed, or by imprisonment in the county jail until such fine be paid, or until discharged as provided by law.

Historical: Laws 1899, 70, Secs. 3 and 4; re-enacting Laws 1890-91, 233, Secs. 1, 2.

Cross Reference: Convicts are to be employed within the prison grounds, except when the work is done on public works under the direct control

of the State: Const. Art. 13, Sec. 3. Employment of aliens on or in connection with State or municipal works prohibited: Const. Art. 13, Sec. 5. Rights of aliens to hold property: Secs. 2609, 2610.

Counties, Cities and Corporations Not to Employ Aliens.

Sec. 1458. It shall hereafter be unlawful for any county government, or municipal or private corporation organized under the laws of this State or organized under the laws of another State or Territory or in a foreign county and doing business in this State, to give employment in any way to any alien who has failed, neglected or refused, prior to the time such employment is given, to become naturalized or to declare his intention to become a citizen of the United States.

Historical: Laws 1899, 70, Sec. 5; re-enacting Laws 1897, 5, Sec. 1.

Discharge of Alien Employee.

Sec. 1459. Whenever employment has been innocently given to any alien by any county government, municipal or private corporation mentioned in the preceding section, and complaint shall be made in writing by any person to the officers of the county government or municipal corporation, or to the general manager, superintendent, foreman or other agent of the private corporation, having charge or superintendency of the labor of such alien employee, that such employee is an alien, he shall forthwith discharge such employee from employment unless said employee shall produce his declaration to become a citizen, or his certificate of naturalization, or a duly certified copy thereof.

Historical: Laws 1899, 70, Sec. 6; re-enacting Laws 1897, 5, Sec. 2. The section referred to "Section 1 of this act," but the reference was obviously

to the preceding section, which was Sec. 1 of the 1897 act, and the change was overlooked in the re-enactment.

Same: Refusal to Discharge.

Sec. 1460. Any public officer or any county government, or municipal corporation, or any general manager, superintendent, foreman, or other agent of any private corporation, or any contractor or agent of any company engaged in public work, who shall violate any of the provisions mentioned in this article, or who shall knowingly give employment to any alien, or who having innocently given such employment, shall, on complaint being made to him by any person, fail or refuse to discharge any such employee forthwith on

the failure or refusal of such employee to produce for his inspection and the inspection of the complainant, his declaration of intention to become a citizen, or certificate of naturalization, as provided in the preceding section, shall be deemed guilty of a misdemeanor.

Historical: Laws 1899, 70, Sec. 7; re-enacting Laws 1897, 5, Sec. 3. This section contained the same error in reference as the preceding section, by

referring to Sec. 2 of the re-enactment instead of to Sec. 2 of the original act.

CHAPTER 29.

DAYS WORK AND CHILD LABOR.

Article

1. Days work on public works.
2. Days work in mines.

Article

3. Child labor.

ARTICLE 1.

DAY'S WORK ON PUBLIC WORKS.

Section

1461. Eight hours a day's work.

Section

1462. Bids for public work.

Eight Hours a Day's Work.

Sec. 1461. Not more than eight hours' actual work shall constitute a lawful day's work on all State, county and municipal works: *Provided*, That nothing in this article contained shall be construed as meaning any labor except manual labor, employed by the day, and nothing in this article contained shall apply to State, county or municipal officials, or to any employees of the State or of any county or municipality, who are paid monthly or yearly salaries.

Historical: Laws 1899, 113, Sec. 1.

Cross Reference: Eight hours shall constitute a lawful day's work on State

and municipal works: Const. Art. 13, Sec. 2.

Bids for Public Work.

Sec. 1462. Any and all bids for work on public buildings or other public works of the State, or of any county or municipality of the State, shall expressly state and declare that all laborers and mechanics employed by the day on such buildings or public works, or in the preparation of materials to be directly used for or in the construction of such buildings or public works, shall be employed on the basis of eight hours as a lawful day's work.

Historical: Laws 1899, 113, Sec. 2.

ARTICLE 2.

DAY'S WORK IN MINES.

Section

1463. Eight hours a day's work.
1464. Same: In smelters.

Section

1465. Violation of article a misdemeanor.

Eight Hours a Day's Work.

Sec. 1463. The period of employment of working men in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

Historical: Laws 1907, 97, Sec. 1.

Same: In Smelters.

Sec. 1464. The period of employment of working men in smelters, and in all other institutions for the refining or reduction of ores or metals, shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

Historical: Laws 1907, 97, Sec. 2.

Violations of Article a Misdemeanor.

Sec. 1465. Any person, body corporate, agent, manager or employer who shall violate any of the provisions of the two preceding sections shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Historical: Laws 1907, 97, Sec. 3.

ARTICLE 3.
CHILD LABOR.

Section	Section
1466. Restrictions on employment of children under fourteen.	1470. Penalty for violation of article.
1467. Same: Children under sixteen: Educational requirements.	1471. Prohibition against theatrical employment of children.
1468. Employers to keep record of minor employees.	1472. Employment of minors in saloons, etc.
1469. Working hours for children under sixteen.	1473. Probation officers and school trustees to bring complaint.

Restrictions on Employment of Children Under Fourteen.

Sec. 1466. No child under fourteen years of age shall be employed in, or permitted or suffered to work in or in connection with, any mine, factory, workshop, mercantile establishment, store, telegraph or telephone office, laundry, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages. It shall be unlawful for any person, firm or corporation to employ any child under fourteen years of age in any such business or service whatever, during the hours in which the public schools of the district in which the child resides are in session, or before the hour of six o'clock in the morning, or after the hour of nine o'clock in the evening: *Provided*, That any such child, over the age of twelve years, may be employed at any of the occupations mentioned in this article during the regular vacations, of two weeks or more, of the public schools of the district in which such child resides.

Historical: Laws 1907, 248, Sec. 1.	in underground mines prohibited:
Cross Reference: Employment of children under fourteen years of age	Const. Art. 13, Sec. 4.

Same: Children Under Sixteen: Educational Requirements.

Sec. 1467. No minor who is under sixteen years of age shall be employed or permitted to work at any gainful occupation during the hours that the public schools of the school district in which he resides are in session, unless he can read at sight, and write legibly, simple sentences in the English language, and has received instruction in spelling, English grammar, and geography, and is familiar with the

fundamental operations of arithmetic up to and including fractions, or has similar attainments in another language.

Historical: Laws 1907, 248, Sec. 2.

Employers to Keep Record of Minor Employees.

Sec. 1468. Every person, firm, corporation, agent or officer of a firm or corporation employing or permitting minors under sixteen years of age and over fourteen years of age to work in any mine, factory, workshop, mercantile establishment, store, telegraph or telephone, office, laundry, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, shall keep a record of the names, ages, and places of residence of such minors.

Historical: Laws 1907, 248, Sec. 3.

Working Hours for Children Under Sixteen.

Sec. 1469. No person under the age of sixteen years shall be employed or suffered or permitted to work at any gainful occupation more than fifty-four hours in any one week, nor more than nine hours in any one day; nor before the hour of six o'clock in the morning, nor after the hour of nine o'clock in the evening.

Historical: Laws 1907, 248, Sec. 4.

Penalty for Violation of Article.

Sec. 1470. Whoever employs a child under sixteen years of age, and whoever, having under his control a child under such age, permits such child to be employed in violations of Sections 1466 and 1467, shall, for such offense, be fined not more than fifty dollars, and whoever continues to employ any child in violation of either of said sections after being notified by a truant officer, probation officer or school authority, shall, for every day thereafter that such employment continues, be fined not less than five nor more than twenty dollars. A failure to produce to a truant officer, policeman, probation officer or school authority, the age record required by this article, shall be prima facie evidence of the illegal employment of any person whose age record is not produced. Any parent, guardian or custodian of a minor under sixteen years of age, who knowingly swears falsely as to the age of such child for the purpose of obtaining an age record, is guilty of perjury.

Historical: Laws 1907, 248, Sec. 5.

Cross Reference: Punishment for perjury: Sec. 6486.

Prohibition Against Theatrical Employment of Children.

Sec. 1471. Any person, whether as parent, relative, guardian, employer or otherwise, having the care, custody or control of any child under the age of sixteen years, who exhibits, uses or employs in any manner, or under any pretense sells, apprentices, gives away, lets out or disposes of such child to any person, under any name, title or pretense, for or in any business, exhibition or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging or peddling, or as a gymnast, acrobat or contortionist, or rider, or in

any place whatsoever, or for any obscene, indecent or immoral purpose, exhibition or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or who causes, procures or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Every person who takes, receives, hires, employs, uses, exhibits or has in custody any child under the age and for any of the purposes mentioned in this section, is guilty of a like offense and punishable by like imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child as a singer or musician in any church, school or academy, or the teaching or learning of the science or practice of music.

Historical: Laws 1907, 248, Sec. 6.

Employment of Minors in Saloons, Etc.

Sec. 1472. Any person, whether as parent, guardian, employer or otherwise, and any firm or corporation, who as employer or otherwise, shall send, direct or cause to be sent or directed, any minor, to any saloon, gambling house, house of prostitution or other immoral place; or who shall employ any minor to serve intoxicating liquors to customers, or who shall employ a minor in handling intoxicating liquors or packages containing such liquors in a brewery, bottling establishment or other place where such liquors are prepared for sale or offered for sale, shall, for each offense, be punished by a fine of not less than fifty dollars, or imprisonment for not less than two months, or by both such fine and imprisonment.

Historical: Laws 1907, 248, Sec. 7.

Probation Officers and School Trustees to Bring Complaint.

Sec. 1473. The probation officer, or in counties where there is no probation officer one or more of the school trustees, shall visit the various places of employment mentioned in Sections 1466 and 1472, and ascertain whether any minors are employed therein contrary to the provisions of this article, and they shall bring complaint for offenses under this article to the attention of the prosecuting attorney for prosecution, but nothing herein shall be held to prohibit any reputable citizen from bringing complaint for violations of this article. All offenses under this article shall be prosecuted in the probate court.

Historical: Laws 1907, 248, Sec. 8.

PARTICULAR INDUSTRIES.
CHAPTER 30.
THE PRINTING TRADE.

Section
1474. Contracts for State printing.
1475. Contracts for county printing.
1476. Exception in case of excessive charge.

Section
1476a. Penalty for violation of chapter.
1477. Rates for official notices.

Contracts for State Printing.

Sec. 1474. All printing, binding and stationery work, executed for or on behalf of the State, and for which the State contracts, or becomes in any way responsible, shall be executed within the State of Idaho, except as provided in Section 1476.

Historical: Laws 1903, 333, Sec. 1.

Cross Reference: Contract to print

Supreme Court reports to be let within the State if feasible: Sec. 227.

Contracts for County Printing.

Sec. 1475. All county printing, binding and stationery work, executed for or on behalf of the several counties throughout the State, for which the said counties contract, or become in any way responsible, shall be executed within the county for which said work is done, when there are practicable facilities within the said county for executing the same, but when it shall become necessary, from want of proper facilities, to execute the work without the said county, then the same shall be executed at some place within the State of Idaho, except as provided in the following section.

Historical: Laws 1903, 333, Sec. 2.

Exception in Case of Excessive Charge.

Sec. 1476. Whenever it shall be established that any charge for printing, binding or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the State or county officer or officers having such work in charge shall have power to have such work done outside of said county or State, but nothing in this chapter shall be construed to oblige any of said officers to accept any unsatisfactory work.

Historical: Laws 1903, 333, Sec. 3.

Penalty for Violation of Chapter.

Sec. 1476a. Any State or county officer either as an official, member of a board, or purchasing agent, who violates any of the above provisions, is guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each offense, and shall be liable upon his official bond for the amount of such contract entered into.

Historical: Laws 1903, 333, Sec. 6.

Rates for Official Notices.

Sec. 1477. The rate to be charged for all official notices, required by law to be published in any newspaper in this State, by any State, county, municipal official or other person, shall be one dollar per vertical inch, single column measure, consisting of not less than ten lines in nonpareil type or its equivalent, or sixty words to the inch, for first insertion; and fifty cents per inch for each subsequent insertion; and for table or figure matter, one dollar and one-half per vertical inch, consisting of not less than ten lines in nonpareil type or its equivalent, and seventy-five cents for each subsequent insertion; fractional inches to be charged for pro rata: *Provided*, That no charge shall be made for less than an inch in any case.

Historical: Laws 1907, 27, Sec. 1.

CHAPTER 31. WAREHOUSEMEN.

Section

- 1478. State Grain Commission.
- 1479. Establishment of grades and regulations.
- 1480. Same: Manner of establishing grades.
- 1481. Publication of grades and regulations.
- 1482. Commission to furnish sample of grain.
- 1483. Compensation of commissioners.
- 1484. Disposal of moneys collected by commission.
- 1485. Audit and payment of expenses.

Section

- 1486. Receipts for grain and produce.
- 1487. Form of receipt.
- 1488. Restrictions on issuance.
- 1489. Mixing grades prohibited.
- 1490. Unauthorized sales by warehouseman.
- 1491. Checks and receipts negotiable.
- 1492. Possession to be delivered.
- 1493. Violation of chapter a felony: Action for damages.

State Grain Commission.

Sec. 1478. The State Grain Commission consists of three qualified electors of the State of Idaho, who are appointed by the Governor to hold office for two years and until their successors are appointed and qualified, unless sooner removed by the Governor. The Commissioners shall be appointed each odd numbered year. Said Commissioners shall take the oath of office required of other State officers. Each of them shall be a competent and experienced grain man, and they shall be selected from different sections of the State. The decisions of a majority of the Commissioners shall be deemed the decisions of the commission on all questions arising for their consideration.

Historical: Laws 1907, 529, Sec. 1; amending, by addition of Secs. 8 and 9, Laws 1899, 7. Re-written so as to omit the provisions for the appointment of the first commission, and to fix the year for the appointment of

the commissioners as contemplated by the act.

Comparative Legislation: See Washington: Bal. An. Code, Secs. 2893, 2894.

Establishment of Grades and Regulations.

Sec. 1479. The board shall select one of its members as chairman of said commission, and before the twentieth day of September of each year said commission shall be called together by the chairman at some place within the State, and shall then and there establish standard grades of all grain bought or handled by any public warehouse within this State which shall be known as "Idaho grade." The said commission shall also establish the necessary rules and regulations for grading and weighing grain, and shall fix the charges for inspecting and grading grain, and shall make such other rules and regulations as may be necessary for enforcing the regulations of this chapter or any law of this State in regard to the same.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 10.

Same: Manner of Establishing Grade.

Sec. 1480. For the purpose of maintaining the grades of wheat in this State, it shall be the duty of the chairman to procure from every

part of the State of Idaho, each season, as soon as it can be done after harvest, samples of the crop of grains, and after collecting such samples of grain he shall call a meeting of the State Grain Commission, and they shall make up and establish from said samples the said grade, which shall be a fair average mixture of all the varieties of grain in the different sections of the State. If the said State Grain Commission deem it expedient they may, in making up and establishing the said grades, meet and confer with like grain authorities in the States of Oregon and Washington, or, in case there are no such authorities in the States of Oregon and Washington, then with the representatives of the leading handlers of grain in the cities of Portland, Oregon, and Tacoma, Washington, and make up and establish the same fair average quality, which shall be maintained in this State. This section shall not be so constructed as to interfere with the standard grades of grain elsewhere provided for in this chapter.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 13.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 2899.

Publication of Grades and Regulations.

Sec. 1481. The said standard grades, charges, rules and regulations so made and established, shall be published in some newspaper printed and published in every county in the State of Idaho for a period of two weeks, beginning immediately after they are made or established, and it shall be the duty of every warehouseman within this State to apply to and receive of the chairman a placard copy of the said standard grades, charges, rules and regulations which he shall keep posted in a conspicuous place in his office, and which the chairman shall furnish free of cost. Said commission may modify such grades, rules and regulations or establish new ones, and such changes shall be advertised the same as required for the original.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 11.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 2897.

Commission to Furnish Sample of Grain.

Sec. 1482. It shall be the duty of the commission to furnish any elevator or warehouse in this State or adjoining States, standard samples of grain as established by the State Grain Commission when requested to do so by the proprietor, lessee or manager thereof, at the actual cost of such sample. It shall be the duty of the commission to advertise the cost to the warehousemen off the said standard samples of grain, at the time the said standard grades, charges, rules and regulations are advertised as herein provided.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 12.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 2898.

Compensation of Commissioners.

Sec. 1483. The members of the said Grain Commission shall receive five dollars for each day in going to, attending upon and returning from any meeting of said commission, but not more than four meetings shall be held in any one year.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 14.

Disposal of Moneys Collected by Commission.

Sec. 1484. All moneys collected by the Grain Commission from any source, shall be paid into the State Treasury on or before the fifteenth day of the month succeeding said collection, accompanied with a statement showing from what source collected and the amount of such collection. It shall be the duty of the State Treasurer to receive all moneys aforesaid, and to credit the same to the grain inspection fund, and said fund is hereby appropriated for the purpose of carrying out the provisions of this chapter.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 15.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 2903.

Audit and Payment of Expenses.

Sec. 1485. All expenditures and salaries, not otherwise provided for in this chapter, shall be audited and paid out of the current expense fund of the State the same as the account of any other State official.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 16.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 2904.

Receipts for Grain and Produce.

Sec. 1486. It shall be the duty of every person keeping, controlling, managing or operating, as owner or agent or superintendent of any company or corporation, any warehouse, commission house, forwarding house, mill, wharf or other place where grain, flour, wool or other product is stored, to deliver to the owner of such grain, flour, wool, or other product a warehouse receipt therefor, which receipt shall bear the date of its issuance, and shall state from whom received, the number of sacks (if sacked), the number of bushels or pounds, the condition or quality of the same, and the terms and conditions upon which it is stored: *Provided*, That in case of grain the receipt shall show the grade thereof, and shall be conclusive evidence of what it contains as against said warehouse, and no further expense or charge shall be made than is provided for in said receipt, and the grade so shown by said warehouse receipt shall conform to the grades established by the State Grain Commission.

Historical: Laws 1899, 7, Sec. 1; re-enacting Laws 1890-91, 12, Sec. 1. The proviso is compiled from Laws 1907, 529, Sec. 1, amending the act of 1899 by adding thereto Sec. 17, the first part of which section is identical in language with the first part of Sec.

1 of the 1899 law, and the contents of the last part is preserved by the proviso.

Comparative Legislation: See Washington: Hill's An. Code, Vol. 1, Sec. 2400.

Form of Receipt.

Sec. 1487. The receipt required in the last preceding section shall be in form as follows:

(Name of firm or company.)

No.

(Place and date.)

Received in store from (name of consignor), (quantity), gross _____ lbs., tare _____ lbs., net _____ lbs., No. _____ (give here grade and name of commodity), at owner's risk of unavoidable damage, to be delivered at this warehouse, upon return of this receipt, properly indorsed, and payment of charges. This receipt negotiable when duly indorsed by consignor. Storage to (here give amount and date).

Signed (Name of firm or company.)

(Name of agent), Agent.

Historical: Laws 1907, 529, Sec. 1; amending Laws 1899, 7, by adding Sec. 18.

Comparative Legislation: See Washington: Hill's An. Code, Vol. 1, Sec. 2401.

Restrictions on Issuance.

Sec. 1488. No person shall issue any receipt or other vouchers as provided for in the two preceding sections for any grain, flour, wool or other produce not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same while any former receipt is outstanding for the same property or any part thereof, without writing across the face of the same the word "duplicate."

Historical: Laws 1899, 7, Sec. 2; re-enacting Laws 1890-91, 12, Sec. 2.

Comparative Legislation: See Washington: Hill's An. Code, Vol. 1, Sec. 2402.

Comparative Legislation: See Wash-

Mixing Grades Prohibited.

Sec. 1489. No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, wool, or other product or commodity, is stored, shall mix any grain, flour, wool, or other product or commodity, of different grades together (or different qualities of the same grade), or deliver one grade for another, or in any way tamper with the same while in his possession or custody; and such person shall in no case mix different grades together while in store without the consent of the owner or owners thereof in writing.

Historical: Laws 1899, 7, Sec. 3; re-enacting Laws 1890-91, 12, Sec. 3. "Such person shall" inserted in the last clause, to complete the sense.

Comparative Legislation: See Washington: Hill's An. Code, Vol. 1, Sec. 2403.

Unauthorized Sales by Warehouseman.

Sec. 1490. No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage, shall sell, hypothecate, ship, transfer, or in any manner remove, or permit to be shipped, transferred or removed beyond his custody and control, any grain, flour, wool or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding or manufacturing or other purposes, without the written assent of the holder of the receipt.

Historical: Laws 1899, 7, Sec. 4; re-enacting Laws 1890-91, 12, Sec. 4.

Comparative Legislation: See Washington: Hill's Ann. Code, Vol. 1, Sec. 2404.

Comparative Legislation: See Wash-

Checks and Receipts Negotiable.

Sec. 1491. All checks or receipts given by any person operating any warehouse, commission house, forwarding house, mill, wharf or other place of storage for grain, flour, wool or other produce or commodity stored or deposited, and all bills of lading and transportation receipts of every kind, are hereby declared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another.

Historical: Laws 1899, 7, Sec. 5; re-enacting Laws 1890-91, 12, Sec. 5.

Comparative Legislation: See Wash-

ington: Hill's Ann. Code, Vol. 1, Sec. 2407.

Possession to Be Delivered.

Sec. 1492. On the presentation of the receipt given by any person operating any warehouse, commission house, forwarding house, mill, wharf or any other place of storage for any grain, flour, wool or other produce or commodity, and on payment of all the charges due thereon the owner shall be entitled to the immediate possession of the commodity named in such receipt, and it shall be the duty of such warehouseman, wharfinger, mill man or other bailee to deliver such commodity to the owner of such receipt.

Historical: Laws 1899, 7, Sec. 6; re-enacting Laws 1890-91, 12, Sec. 6.

Comparative Legislation: See Washington: Hill's Ann. Code, Vol. 1, Sec. 2405.

Cited: *Lawson v. Genesee, etc., Co.* (1895) 4 Ida. 588; 43 Pac. 191.

Violation of Chapter a Felony: Action for Damages.

Sec. 1493. Any person who shall violate any of the provisions of this chapter shall be guilty of a felony, and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, or be imprisoned in the Penitentiary of this State not exceeding five years, or both; and in case of a corporation the person acting for such corporation shall be liable for a like punishment upon indictment and conviction. And all and every person or persons aggrieved by a violation of this chapter may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this chapter, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this chapter or not.

Historical: Laws 1899, 7, Sec. 7; re-enacting Laws 1890-91, 12, Sec. 7.

Comparative Legislation: See Washington: Hill's Ann. Code, Vol. 1, Sec. 2406.

Sufficiency of Complaint: In an action under this section, a complaint alleging that the defendant warehouseman, disregarding its duty and obliga-

tions in the premises, and without plaintiff's knowledge and consent, and in fraud of plaintiff's rights, refused and neglected to deliver wheat called for by certain receipts, states a cause of action based on a violation of the preceding section. *Lawson v. Genesee, etc., Co.* (1895) 4 Ida. 588; 43 Pac. 191.

CHAPTER 32.
INSPECTION OF LUMBER.

Section	Section
1494. Designation of lumber districts.	1501. Scribner decimal rule is stand- ard of measurement.
1495. Lumber inspectors.	1502. Recording lumber marks.
1496. Same: Oath and bond.	1503. Sales and mortgages of logs to be recorded.
1497. Official seats of inspectors.	1504. Disposition of prize logs.
1498. Sub-districts and deputies.	1505. Fees of inspectors.
1499. Bill of measurement.	
1500. Allowance for rotten logs: Ac- counts of deputies.	

Designation of Lumber Districts.

Sec. 1494. Lumber districts are established and shall be designated by the following numbers respectively:

The Pend d'Oreille River and its tributaries within the State of Idaho, number one;

Coeur d'Alene Lake and all of the streams tributary to and emptying into same, and all of the streams tributary to said streams in the State of Idaho, number two;

The Palouse River and its tributaries within the State of Idaho, number three;

The Payette River and its tributaries in the State of Idaho, number four;

All the Clearwater River in Idaho, number five.

Historical: Laws 1903, 89, Sec. 1.

Lumber Inspectors.

Sec. 1495. The Governor shall appoint an inspector for each of said lumber districts, who shall be styled "Lumber Inspector of District No." (designating the proper district). He shall at the time of his appointment be a citizen of the State and reside within the lumber district for which he is appointed. His term of office shall be two years, and shall commence on the first Monday in April of the year of his appointment, but the incumbent shall hold until his successor is appointed and qualified. All vacancies in such office shall be filled by like appointment, and if such vacancy occurs before the expiration of the term it shall be filled for the residue of the term only.

Historical: Laws 1903, 89, Sec. 2.

Same: Oath and Bond.

Sec. 1496. Each lumber inspector shall, before entering upon the duties of his office, take and subscribe an oath that he will faithfully discharge the duties of his office to the best of his knowledge, judgment and ability, and shall execute to the county in which his office shall be kept, a bond, with three or more sureties to be approved by the treasurer and probate judge, in the sum of five thousand dollars, conditioned that he will faithfully perform his duties as lumber Inspector of District..... (giving number) and deliver to his successor in office all bills, papers, journals, books and other effects, appertaining to his office. Such oath of office and bond shall be filed in the office of such county treasurer; and any person feeling himself

aggrieved may commence an action in his own name on said bond, in like manner as actions may be brought on other official bonds.

Historical: Laws 1903, 89, Sec. 3.
"Probate judge" for "county judge,"
to conform to local nomenclature.

Official Seats of Inspectors.

Sec. 1497. The inspector of lumber district number one shall keep his office at Sandpoint, Idaho; of district number two at Harrison, Idaho; of district number three at Princeton, Idaho; of district number four at Emmett, Idaho; of district number five at Lewiston, Idaho.

Historical: Laws 1903, 89, Sec. 4.

Sub-Districts and Deputies.

Sec. 1498. Each such inspector may divide his district into sub-districts as he may deem best, and for each sub-district as well as for any specific purpose, he may appoint one or more deputies, for whose conduct and fidelity in the discharge of his duties as such he shall be responsible upon his official bond. Each of said lumber inspectors shall have power and authority to administer oaths to their several deputies or for any purpose relating to the duties of their office.

Historical: Laws 1903, 89, Sec. 5.

Bill of Measurement.

Sec. 1499. Each lumber inspector shall, in person or by deputy, at the request of any owner of logs, timber or lumber, after a scalement or measurement thereof, make a bill stating therein the number of logs, the number of feet, board measure, contained in such logs and lumber, and the number of feet, cubic running or board measure, contained in said timber, and at whose request the same were scaled or measured, and to whom scaled or measured, a copy of which he shall enter upon the books of his office, to be provided by him and kept for that purpose, with the marks as they occurred upon the logs. A correct bill of the same shall be given to such owner, with a certificate thereto attached that it is a true and correct bill, which bill so certified shall be presumptive evidence of the facts therein contained, and of the correctness of such scalement or measurement, in all courts, except in favor of the inspector who made the same.

Historical: Laws 1903, 89, Sec. 6.

Allowance for Rotten Logs: Accounts of Deputies.

Sec. 1500. Each lumber inspector and his deputies shall, in surveying or measuring logs, make such allowance for hollow, rotten or crooked logs as would make them equal to good, sound, straight, merchantable logs; and all logs that are straight and sound are to be measured at their full size, inside the bark at the small end. Each lumber inspector shall require of each of his deputies, at the end of each month, a correct account of all the logs, lumber or timber measured by him during the month next preceding, and he shall immediately enter such account upon the books of his office.

Historical: Laws 1903, 89, Sec. 7.

Scribner Decimal Rule Is Standard of Measurement.

Sec. 1501. Unless otherwise agreed upon, the Scribner decimal rule shall be the standard rule for scaling or measuring logs in the said districts; but in all cases the bill of the inspector shall state by what rule the logs were scaled or measured.

Historical: Laws 1903, 89, Sec. 8.

Recording Lumber Marks.

Sec. 1502. Any owner of logs or timber in any of said lumber districts may use thereon any mark not before recorded and used by any other person in the same district; but before any such mark shall be used, it shall be the duty of such owner intending to use the same to cause a diagram, and a full and complete written description of his mark, signed by him, to be recorded in the office of the inspector, who shall record the same, provided the mark, diagram and description are different from any other mark, diagram and description recorded in his office. It shall be the duty of such inspector to keep a book for such purpose of recording all assignments and transfers or marks so recorded, which book shall at all reasonable times be open to public inspection.

No person shall use any mark on any logs or timber until he shall have caused a diagram and description thereof to be so recorded, and no person shall use any mark previously recorded and used by another in the same district, unless authorized so to do by an instrument in writing executed and acknowledged by the owner of such mark, and recorded in the office or offices where said mark is recorded. No person shall mark any prize log. Any person offending against any of the provisions of this section shall forfeit ten dollars, one-half of which shall be paid to the person prosecuting therefor.

Historical: Laws 1903, 89, Sec. 9.

Sales and Mortgages of Logs to Be Recorded.

Sec. 1503. All mortgages, liens, bills of sale or other written instruments in any way affecting the ownership of any marked logs in any lumber districts, shall specify the marks placed upon said logs and when they were cut, and shall be recorded in the office of the lumber inspector in which said marks were recorded; and no such conveyance, lien, mortgage or transfer shall be valid, except as to the parties thereto, until the same is so recorded, or until the same shall be filed with some deputy lumber inspector, who shall immediately forward such instrument to the inspector of the proper district. Such filing and recording of all such instruments and papers shall have the same effect as the recording of deeds and mortgages in the office of the county recorder.

Historical: Laws 1903, 89, Sec. 10. | deeds," to conform to local nomenclature.
"County recorder" for "register of

Disposition of Prize Logs.

Sec. 1504. All prize logs shall be divided between the owners in each sub-district in proportion to the number of logs owned by each person or company, respectively, in each sub-district. Prize logs are hereby defined to mean such logs as bear no mark or marks, and

all logs bearing marks not recorded or claimed within one year after any general drive. Any person with whose logs or timber in any waters of this State such prize logs or timber shall become so intermixed that they can not be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all such logs or timber with which his own may be intermixed toward such market place, when no special or different provision is made by law for driving the same, and shall be entitled to reasonable compensation from the owner for driving such logs or timber, to be recovered after demand therefor on said owner or agent if known; and he shall have a prior lien thereon until thirty days after they arrive at their place of destination to enable him to attach the same; and if the owner thereof can not be ascertained, the property shall be liable to be sold according to law, and enough shall be disposed of to defray the expenses thereof.

Historical: Laws 1903, 89, Sec. 11.
"To be sold" inserted before "according to law," to complete the sense.

Fees of Inspectors.

Sec. 1505. Each lumber inspector shall be entitled to receive the following fees for services, viz: five cents per thousand feet for measuring or scaling and making out survey bills for all logs he is called upon to measure or scale; twelve cents per thousand feet, running measure, for measuring square timber, stulls, railroad ties, telegraph and telephone poles, and cedar posts; and in all cases such fees shall be paid by the owner of the logs, timber or lumber scaled or measured; for recording each mark or assignment thereof, fifty cents; for recording any mortgage, bill of sale or other written instrument, the same fees allowed by law to county recorders for recording like instruments.

Historical: Laws 1903, 89, Sec. 12.
"County recorders" for "registers of deeds."

Cross Reference: Fees of recorder for recording mortgages, etc.: Sec. 2124.

LICENSED OCCUPATIONS.

CHAPTER 33.

THE LIQUOR TRAFFIC.

Section	Section
1506. Liquor dealers must procure license.	1513. City licenses.
1507. Application for licenses.	1514. Same.
1508. Bond of license: Discretion of commissioners.	1515. Sales to intoxicated persons.
1509. Amount and duration of license.	1516. Approval of insufficient bond a misdemeanor.
1510. License to sell liquor not to be drank on premises.	1517. Unlawful gifts equivalent to sales.
1511. Notice not to sell liquor to drunkards.	1518. Sales in violation of chapter a misdemeanor.
1512. Revocation of license for breach of chapter.	1519. Keeping a disorderly house a misdemeanor.
	1520. Liquor dealer's bond liable for fines.

Section

1521. Certain sales by druggists authorized.
 1522. Liquor cannot be drank on premises of druggists.
 1523. Violation of chapter by druggist a misdemeanor.

Section

1524. Evasion of chapter by physician: Simulation of physician's signature.
 1525. Sales to minors unlawful.
 1526. Duties of county officers.
 1527. Intoxicating liquors defined.

Note: The subject of licenses in general is covered by the Revenue Law, Tit. 10, Chap. 2. This chapter and the one following contain many provisions peculiar to themselves, and not in harmony with the matters covered by the Revenue Law. They are primarily police measures, and consequently are inserted in this place.

Liquor Dealers Must Procure License.

Sec. 1506. It shall be unlawful for any person, by himself, by agent, or otherwise, to sell spirituous, malt or fermented liquors or wines, to be drank in, on or about the premises where sold, without having first procured a license and given a bond as hereinafter provided.

Historical: Laws 1890-91, 33, Sec. 1.

Applications for Licenses.

Sec. 1507. All applications for a license to sell intoxicating, spirituous, malt or fermented liquors or wines, to be drank or handled in, on or about the premises where sold, must be made to the board of county commissioners of the county wherein it is proposed to sell such liquors, at least twenty days before the meeting at which said application shall be acted upon, and said application shall specify the precinct within which such place of sale is to be located, and said application may be granted or rejected by said board as hereinafter provided.

Historical: Laws 1890-91, 33, Sec. 2; amended Laws 1907, 219, Sec. 1.

Bond of Licensee: Discretion of Commissioners.

Sec. 1508. Before any license is issued, the applicant shall produce before such board the receipt of the sheriff, showing that he has paid into his hands the amount due for such license, and shall execute and deliver to said board his bond to the State of Idaho, which bond shall be in the penal sum of three thousand dollars, with at least two good and sufficient sureties, residents and householders or freeholders of the county, who shall on oath justify in double the penal sum of the bond, to be approved by the board of county commissioners.

Said bond to be in substantially the following form:

"Whereas, _____, of _____, has applied or is about to apply to the board of county commissioners of _____ County, Idaho, for a license to sell intoxicating liquors to be drank or handled in, on or about the premises where sold, at _____, in said _____ County, for the time of _____ months from and after the _____.

"We hereby undertake that the above named _____, if granted such license, will keep a quiet and orderly house for the sale of such intoxicating liquors, and will well and faithfully keep and observe all the laws of Idaho in regard to the sale of intoxicating liquors, and will well and faithfully keep and regard the provisions

of any ordinances and regulations of any municipal organization of the place where such business is to be conducted, relating to the keeping of saloons, taverns and the sale of intoxicating liquors, and if said fails to perform any of the conditions of this bond, or violates any of the provisions of the laws in regard to sale of intoxicating liquors or the keeping of saloons and taverns, we will pay all costs, damages, fines and forfeitures resulting therefrom, not to exceed the sum of three thousand dollars."

No such bond shall be void upon its first recovery, but it may be sued upon and recovered upon from time to time as herein authorized, until the whole penalty thereof is exhausted. The board of county commissioners may require any licensee under the provisions of this chapter to file an additional bond or furnish additional sureties at any time when, in their judgment, the bonds furnished by any licensee are insufficient: *Provided*, That when application is made for the sale of intoxicating liquors, as in this section provided, for a place outside of any incorporated city, either upon their own motion or upon objections duly filed upon the part of any citizen and resident of the precinct within which it is intended to carry on such sale, the county commissioners shall determine whether or not the granting of such license will be conducive to the best interests of the community in which such saloon or business is proposed to be established, and whether or not such applicant is a fit person to have such license and carry on said business, and whether or not such place of sale and business will likely be conducted in a quiet, orderly and peaceable manner, and should said board of county commissioners determine adversely to the applicant upon any grounds above specified, the license must be refused and the sheriff shall return the amount deposited to said applicant; otherwise the said license may be granted; and such order of the board of county commissioners shall be subject to appeal to the District Court as in the case of other orders of said board.

Historical: Laws 1890-91, 33, Sec. 3; amended Laws 1907, 219, Sec. 1.

Cross Reference: Appeals to District Court: Secs. 1950-1953.

Right to License Money: Where a person pays to the sheriff the amount of a liquor license tax and begins business without making application to the board of commissioners for a license, the money paid to the sheriff belongs to the county from the moment the party paying it commences the liquor business, and the sureties on the sher-

iff's bond are liable therefor. *Bingham Co. v. Fidelity & Deposit Co.* (1907) 13 Ida. —; 88 Pac. 829.

Where a person pays a license tax to the sheriff and begins business and thereafter the portion of the county in which such business is carried on is annexed to another county, the license tax so paid to the sheriff must be paid to the treasurer of his county, and his surety is liable to the county therefor. *Ib.*

Amount and Duration of License.

Sec. 1509. The amount to be paid by each applicant for such license shall be the sum of seven hundred and fifty dollars per year, and no license shall be issued under the provisions of this chapter for a less or longer period than one year.

Historical: Laws 1890-91, 33, Sec. 4; amended Laws 1905, 82, Sec. 1; re-enacted Laws 1899, 21, Sec. 1; amended Laws 1901, 13, Sec. 1; amended Laws 1907, 219, Sec. 2.

police measure and does not violate the constitutional requirements of equality and uniformity of taxation. *State v. Doherty* (1892) 3 Ida. 384; 29 Pac. 855.

Constitutionality: This section is a

License to Sell Liquor Not to Be Drank on Premises.

Sec. 1510. All persons selling spirituous, malt or fermented liquors or wines in any quantity, not to be drank in, on or about the premises where sold, shall pay a license of two hundred dollars per year. No license issued under this section shall be for less or longer than one year. Every person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished therefor as provided for in Section 1518.

Historical: Laws 1890-91, 33, Sec. 23; amended Laws 1901, 13, Sec. 2.

Notice Not to Sell Liquor to Drunkard.

Sec. 1511. Any wife, mother, father, son, daughter or sister of a person who is an habitual drunkard, or in the habit of getting intoxicated, or the county commissioners, or the mayor of any city, or any county officer, may make complaint to any justice of the peace of the precinct where such person resides or may be staying, or to the probate judge of the county where such person resides or may be staying, alleging the name of such person, the fact of his being an habitual drunkard, or in the habit of getting intoxicated, and the name or names of the person or persons from whom the person having such habits obtains his liquor, as such relative or officer believes, which complaint shall be verified by the person making the same. Thereupon such justice of the peace or said probate judge shall issue a notice in writing to such person or persons so named, notifying him or them that no intoxicating liquors of any kind must be sold or given away by him or them, or at his or their place or places of business, to such person having such habit, and said notice must at once be served upon such person or persons as summons are served from justice courts. After the service of such notice, if any person or persons so notified shall sell, give away, or permit any person at his place of business to sell or give away, any intoxicating liquor to such person about whom he or they have received notice as aforesaid, his or their license to sell liquor shall from that time be deemed and held to be cancelled and annulled; and said person, and each of said persons, if more than one, shall be guilty of a misdemeanor, and be liable in a civil action brought in the name or for the benefit of the person making such complaint, in the sum of two hundred dollars for each offense, and the wife, if there be one, may bring such suit without uniting her husband as a party to the action: *Provided*, In all cases the party making such complaint may cause the same to be published at least once a week for a period of four weeks in a newspaper published in such county, and upon such notice all persons having notice of the publication of such notice, whether engaged in such business or not, who shall sell, give away or furnish such intoxicating liquors to such habitual drunkard, or person who is in the habit of getting intoxicated, within the provisions of this chapter, shall be guilty of a misdemeanor: And, *Provided, further*, That any person having actual knowledge or notice that any person is such an habitual drunkard, or in the habit of getting intoxicated, and that notice thereof has been served upon any liquor dealer included within the terms

of this chapter by either of the methods of service hereinbefore provided for, who shall sell, give away or furnish to any such habitual drunkard, or person who is in the habit of getting intoxicated, any intoxicating liquors, shall be guilty of a misdemeanor: *Provided, further,* That when such notice shall be served upon any individual, firm or corporation engaged in the sale of intoxicating liquor, it shall be the duty of such individual, firm or corporation, to immediately post the same in a conspicuous place in his or their place of business, and upon failure so to do such person, firm, or the agent of such corporation having charge of the place of business of such corporation, shall be guilty of a misdemeanor.

Historical: Laws 1890-91, 33, Sec. 5; amended Laws 1907, 325, Sec. 1.

Revocation of License for Breach of Chapter.

Sec. 1512. When any person so licensed shall be convicted of a violation of any of the provisions of this chapter, or any of the penal statutes of this State relating to the sale of intoxicating liquors, or shall fail to conduct his place of business in a quiet, orderly and peaceable manner, or shall violate any of the conditions of said bond hereinbefore provided for, the board of county commissioners may, and it is hereby made their duty to, revoke said license. But such revocation shall not be construed to discharge such licensee or his sureties for any damages sustained by, or right accrued to, any person prior to said revocation.

Historical: Laws 1890-91, 33, Sec. 6; amended Laws 1907, 219, Sec. 1.

City Licenses.

Sec. 1513. It shall be competent or lawful for any incorporated city or town within the county where such bond is filed and license granted, to prohibit the person so licensed, as well as all others, from engaging in the business of selling intoxicating liquors within the corporate limits until he shall obtain from said city or town authorities, such license as may be authorized by law and required by the ordinances and regulations of said city or town: *Provided,* That no additional bond shall be required by said city or town, nor shall any license be granted by the authorities of any such city or town, to any one who has not filed the required bond with the board of county commissioners, and obtained from such board a license as herein provided: And, *Provided, further,* That no license granted by such city or town shall run for any longer period than the license granted by such board of county commissioners; and the revocation of the county license granted by the board of county commissioners shall work a revocation of any license granted by such city or town.

Historical: Laws 1890-91, 33, Sec. 7.

Same.

Sec. 1514. It shall be competent and lawful for both the county commissioners of any county, and also the proper authorities of any city or town situated therein, to require the payment of the licenses herein and by law provided, and the granting of the power to license or tax in any city or town shall not be held as in any way conflicting

with the provisions of this chapter, the intention being to allow both the county and the city or town authorities to levy and collect a license for the sale of spirituous, malt and fermented liquors and wine as herein provided, and as provided by the charter and ordinance of such city or town.

Historical: Laws 1890-91, 33, Sec. 8.

Sales to Intoxicated Persons.

Sec. 1515. Every person, with or without a license, who shall sell or give away to any person already intoxicated, any spirituous, malt or fermented liquor or wine, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than three hundred dollars, or imprisoned in the county jail not to exceed six months.

Historical: Laws 1890-91, 33, Sec. 9.

Approval of Insufficient Bond a Misdemeanor.

Sec. 1516. Any county commissioner who shall knowingly approve any insufficient bond required by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than three hundred dollars.

Historical: Laws 1890-91, 33, Sec.
10.

Unlawful Gifts Equivalent to Sales.

Sec. 1517. The giving away of intoxicating liquor of any kind, or any other shift or device to evade the provisions of this chapter, shall be deemed and held to be an unlawful selling within the provisions of the same.

Historical: Laws 1890-91, 33, Sec.
11.

Sales in Violation of Chapter a Misdemeanor.

Sec. 1518. Every person selling or giving away spirituous, malt or fermented liquors or wine in violation of the provisions of this chapter, or without first having complied with the requirements of the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than three hundred dollars.

Historical: Laws 1890-91, 33, Sec.
12.

Keeping a Disorderly House a Misdemeanor.

Sec. 1519. Any person engaged in the business of retailing liquors under the provisions of this chapter, who shall keep a disorderly house or allow boisterous or disorderly conduct therein, or shall allow the peace and quietude of the neighborhood to be disturbed by loud and unusual noises therein, or threatening, abusive or obscene language therein, or by other means or methods, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly, and his license may likewise be revoked as provided in Section 1512 hereof.

Historical: Laws 1890-91, 33, Sec. 13. Section "1512" for "7." The provision for revocation of licenses is

found in Sec. 6 of the original act (Code, Sec. 1512), and not in Sec. 7 (Code Sec. 1513).

Liquor Dealer's Bond Liable for Fines.

Sec. 1520. The bond required to be given by the provisions of Section 1508 shall be liable for the payment of all fines, costs, compensation and damages assessed against the person giving it, in consequence of the sale of intoxicating liquors, contrary to the provisions of this chapter.

Historical: Laws 1890-91, 33, Sec. 14.

Certain Sales by Druggists Authorized.

Sec. 1521. It shall be lawful for regular druggists or apothecaries to sell, without license, spirituous and vinous liquors for medicinal purposes, upon the written prescription of a regular practicing physician of this State, who certifies that in his opinion the health of the party to whom the liquor is to be sold requires or would be promoted by the use of the particular kind of liquor prescribed. It shall also be lawful for druggists, without the license herein provided, to sell wines for sacramental purposes, and to sell alcohol for mechanical and scientific purposes.

Historical: Laws 1890-91, 33, Sec. 15.

Liquor Cannot Be Drank on Premises of Druggists.

Sec. 1522. It shall be unlawful for druggists to sell spirituous, malt or fermented liquors or wines to be drank, or to permit the same to be drank, in, upon or about the premises where sold, or in any room or building connected therewith.

Historical: Laws 1890-91, 33, Sec. 16.

Violation of Chapter by Druggist a Misdemeanor.

Sec. 1523. Any druggist violating any of the provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, he shall be fined in any sum not less than one hundred dollars, nor more than three hundred dollars.

Historical: Laws 1890-91, 33, Sec. 17.

Evasion of Chapter by Physician: Simulation of Physician's Signature.

Sec. 1524. Any physician who shall give any person or persons a prescription to obtain liquor from a druggist to enable such person or persons to evade the provisions of this chapter, shall be guilty of a misdemeanor. Any person not a physician who shall give any person or persons a prescription to obtain liquor from a druggist, and sign it in his own name as a physician, or sign the name of a regular physician thereto, or sign the name of any other person or any fictitious name, pretending by such signature that such name is that of a physician, shall be guilty of a felony.

Historical: Laws 1890-91, 33, Sec. 18.

Sales to Minors Unlawful.

Sec. 1525. It shall be unlawful for any person or persons to sell or give away any spirituous, vinous or malt liquors to a minor. Any person violating this section is guilty of a misdemeanor.

Historical: Laws 1890-91, 33, Sec. 19.

Duty of County Officers.

Sec. 1526. It is hereby made the duty of the prosecuting attorney, sheriff, and all constables and peace officers of the county or municipality, knowing of any violation of this chapter, to make complaint thereof before the proper tribunal.

Historical: Laws 1890-91, 33, Sec. 20.

Intoxicating Liquors Defined.

Sec. 1527. The words "intoxicating liquors," as used in this chapter, shall be deemed and construed to include spirituous, vinous, malt and fermented liquors, and all mixtures and preparations thereof, including bitters that may be used as a beverage and produce intoxication.

Historical: Laws 1890-91, 33, Sec. 21.

CHAPTER 34.**PEDDLERS.****Section**

- 1528. Peddlers defined.
- 1529. Penalty for peddling without a license.
- 1530. Application for and issuance of license.

Section

- 1531. Applications to be filed.
- 1532. Cancellation of licenses.
- 1533. Liability of deposit to claims against licensee.

Peddlers Defined.

Sec. 1528. The term "peddler" for the purpose of this chapter shall be construed to include all persons, both principals and agents, who go from place to place and house to house, carrying for sale or offering for sale or exposing for sale, goods, wares or merchandise: *Provided*, That nothing in this chapter shall apply to peddlers in agricultural or farm products.

Historical: Laws 1905, 97, Sec. 1.

Repeal: The act commencing with this section repeals Laws 1901, 155. Decisions under the repealed act were as follows:

Constitutionality: The act of 1901 was held to be an unconstitutional interference with interstate commerce in so far as it applied to one who was not the owner of the goods for which he solicited orders, but who merely exhibited a sample thereof and took orders for goods to be afterwards shipped into the State pursuant to such orders. In re Kinyon (1904) 9 Ida. 642; 75 Pac. 268.

A clause of the act which sought

to exclude runners traveling for wholesale houses and "taking orders from merchants only" from the provisions of the act requiring a license, was held class legislation in contravention of the State and Federal Constitutions. In re Abel (1904) 10 Ida. 288; 77 Pac. 621.

A provision of the act which excluded from its requirements peddlers or hawkers in farm produce was held to apply to farm produce of other States as well as of this State, and was not class legislation, nor did it interfere with interstate commerce. *Ib.*

Municipal Ordinances: On ordinance by the terms of which a farmer

was prohibited from selling his farm produce without first taking out a city license was held void under a provision of the act of 1901, which ex-

cluded peddlers of farm products from its provisions. In re Snyder (1905) 10 Ida. 682; 79 Pac. 819.

Penalty for Peddling Without License.

Sec. 1529. Every peddler who shall sell, or offer for sale, or expose for sale, at public or private sale, any goods, wares or merchandise, without a county license issued as hereinafter provided, shall be punished by imprisonment for not less than thirty days, or more than ninety days, or by fine or not less than fifty dollars, or more than two hundred dollars, or by both.

Historical: Laws 1905, 97, Sec. 2.
California Legislation: See Pol.

Code 1872, Sec. 3384; as amended:
Deering's Code, ib.; Kerr's Code, ib.

Application for and Issuance of License.

Sec. 1530. Every peddler, whether principal or agent, shall, before commencing business in any county of the State, make application in writing and under oath, to the county treasurer for the county in which he proposes to make sales, for a county license. Such application must state the names and residences of the owners or parties in whose interest said business is conducted, and shall state the number of horses and vehicles to be used by him. At the same time he shall file a true statement under oath of the quantity and value of the stock of goods, wares and merchandise that is in the county for sale, or to be kept or exposed for sale in said county. He shall also at the same time make a special deposit of five hundred dollars with the county treasurer aforesaid, and shall pay the said treasurer the county license fee as follows:

1. Peddler on foot, one hundred dollars;
2. Peddler with one horse and a wagon, one hundred and fifty dollars;
3. Peddler with two horses and wagon, two hundred and fifty dollars.
4. Peddler with any other conveyance, three hundred dollars.

The county treasurer shall thereupon issue to said applicant a peddler's license, authorizing him to do business in the county aforesaid for the term of one year from the date thereof: *Provided*, That the license issued under and by virtue of this chapter shall expire by limitation on the second Monday of January succeeding the year in which said license is issued. Every county license shall contain a copy of the application therefor, and shall not be transferable, and shall not authorize more than one person to sell goods as a peddler, either by agent or clerk, or in any other way than in his own proper person.

Historical: Laws 1905, 97, Sec. 3.

Applications to Be Filed.

Sec. 1531. The county treasurer of each county shall keep on file all applications for licenses issued thereon. All files and records of said county treasurer shall be in convenient form and open to public inspection.

Historical: Laws 1905, 97, Sec. 4.

Cancellation of Licenses.

Sec. 1532. Upon the expiration and return of each county license, the county treasurer shall cancel the same, indorse thereon the cancellation thereof and place the same on file. He shall then hold the special deposit of the licensee for a period of ninety days from the date of said cancellation, and after satisfying any and all claims made upon the same under the following section, he shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee.

Historical: Laws 1905, 97, Sec. 5.
Phraseology slightly changed to express the sense.

Liability of Deposit to Claims Against Licensee.

Sec. 1533. Each deposit made with the county treasurer of any county in this State, shall be subject to all taxes legally chargeable to the same, and to attachment and execution on behalf of the creditors of the licensee whose claims arise in connection with the business done under his county license, and the treasurer may be held to answer as trustee in any civil action in contract or tort brought against any licensee, and shall pay over, under order of the court or upon execution, such amount of money as the licensee may be chargeable with upon the final determination of the case. Such deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violations of the provisions of the preceding sections, which shall be a lien upon the same, and shall be collected in the manner provided by law.

Historical: Laws 1905, 97, Sec. 6.

MISCELLANEOUS PROVISIONS.**CHAPTER 35.****MONEY OF ACCOUNT AND INTEREST.****Section**

- 1534. Money of account defined.
- 1535. Money of other denominations.
- 1536. Computation of judgments.
- 1537. Legal rate of interest.

Section

- 1538. Maximum rate of interest.
- 1539. Compound interest prohibited.
- 1540. Penalty for usury.

Money of Account Defined.

Sec. 1534. The money of account in this State is the dollar, cent, and mill, and all public accounts and the proceedings of all courts in relation to money must be kept and expressed in money of the above denominations.

Historical: Rev. St. 1887, Sec. 1260.
See 12 Ter. Ses. (1879) 7, Sec. 1.

California Legislation: Similar:

Pol. Code 1872, Sec. 3272; Deering's Code, ib.; Kerr's Code, ib.

Money of Other Denominations.

Sec. 1535. The above provisions do not in any manner affect any demand expressed in money of another denomination, but such demand

in any suit or proceeding affecting the same must be reduced to the above denominations.

Historical: Rev. St. 1887, Sec. 1261.
See 12 Ter. Ses. (1879) 7, Sec. 2.

Pol. Code 1872, Sec. 3273; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Similar:

Computation of Judgments.

Sec. 1536. In all judgments rendered by any court for any debt, damages, or costs, and in all executions issued thereon, the amount must be computed, as near as may be in dollars and cents, rejecting small fractions; and no judgment or other proceeding is erroneous for such omission.

Historical: Rev. St. 1887, Sec. 1262.
12 Ter. Ses. (1879) 7, Sec. 3.

Pol. Code 1872, Sec. 3274; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Similar:

Legal Rate of Interest.

Sec. 1537. When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of seven cents on the hundred by the year on:

1. Money due by express contract;
2. Money after the same becomes due;
3. Money lent;
4. Money due on the judgment of any competent court or tribunal;
5. Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied;
6. Money due on the settlement of mutual accounts from the date the balance is ascertained;
7. Money due upon open accounts after three months from the date of the last item.

Historical: Rev. St. 1887, Sec. 1263 (see 12 Ter. Ses. (1879) 7, Sec. 4); amended Laws 1897, 95, Sec. 1; re-enacted Laws 1899, 315, Sec. 1.

Cited: State v. Fitzpatrick (1897) 5 Ida. 499; 51 Pac. 112. Anderson v. Creamery, etc., Co. (1902) 8 Ida. 200; 67 Pac. 493.

Rate of Interest: Where a note

provides for interest at the rate of eighteen per cent, and the note, so far as the interest is concerned, is held void for usury by a judgment rendered under Rev. St. Sec. 1266, interest will be allowed under this section at the rate of seven per cent per annum. Finney v. Moore (1903) 9 Ida. 284; 74 Pac. 866.

Maximum Rate of Interest.

Sec. 1538. Parties may agree in writing for the payment of any rate of interest, on money due or to become due on any contract, not to exceed the sum of twelve per cent. per annum; any judgment rendered on such contract shall bear interest at the rate of seven per cent. per annum until satisfied.

Historical: Rev. St. 1887, Sec. 1264 (see 12 Ter. Ses. (1879) 7, Sec. 5); amended Laws 1897, 95, Sec. 1; re-enacted Laws 1899, 315, Sec. 1.

Cited: Vermont Loan Co. v. Hoffman (1897) 5 Ida. 376; 49 Pac. 314. State v. Fitzpatrick (1897) 5 Ida. 499; 51 Pac. 112. Stevens v. Home Savings & Loan Assn. (1898) 5 Ida. 741; 51 Pac. 779, 986.

Contracts Held Usurious: A contract which provides for a monthly

payment of \$37.50 on a debt of \$2,500, to be applied: (1) To the payment of any fines or other assessments made in pursuance of by-laws; (2) to the payment of the premium for precedence due on the loan amounting to \$8.75 per month; (3) to the payment of interest due on the loan amounting to \$12.50 per month; (4) the balance of said payments to be credited as dues on stock and to continue until the dues credited on the

stock and dividends equal the amount due, is usurious. *Stevens v. Home Savings & Loan Assn.* (1898) 5 Ida. 741; 51 Pac. 779, 986.

A contract of loan between a borrowing member of a building and loan association and the association, by which the borrower agrees to pay a monthly sum of \$6, applicable to the satisfaction of the debt, which was \$650, and \$7.15 monthly interest (called "dues" on "stock") until the entire debt should be paid, is usurious. *Fidelity Savings Assn. v. Shea* (1899) 6 Ida. 405; 55 Pac. 1022.

The exaction of illegal interest under the guise of premiums is in violation of this section. *Cleveland v. Western Loan, etc., Co.* (1901) 7 Ida. 477; 63 Pac. 885.

Premiums exacted for making loans and retained from the face of the loan, or secured by mortgage, constitute unlawful interest, when, added to the rate provided by the loan contract, they make a rate greater than the statutes authorize, and payments upon such premiums and upon interest and principal must be applied to reducing the principal of the debt. *Madsen v. Whitman* (1902) 8 Ida. 762; 71 Pac. 152.

Contracts Not Usurious: The payment of commissions to an agent for procuring a loan, does not render the

loan contract usurious, because the commission plus interest exceeds the rate of interest allowed by statute, in the absence of any showing that the agent was acting on behalf of the lender, or that the latter received any part of the agent's compensation. *Cornwell v. Urton* (1898) 6 Ida. 266; 55 Pac. 294.

The fact that parties to a loan contract agree that the same shall bear interest both before and after judgment, at ten per cent per annum, does not render the contract usurious in the absence of any evidence of a corrupt intent to exact usurious interest. *Anderson v. Creamery, etc., Co.* (1892) 8 Ida. 200; 67 Pac. 493.

A mortgage bearing the highest rate of interest allowed by law is not rendered usurious by a further stipulation whereby the mortgagor agreed to pay taxes on the loan, which stipulation was, at the time it was entered into, absolutely void by the terms of Rev. St. Sec. 1425. *First Nat. Bank of Hailey v. Glenn* (1904) 10 Ida. 224; 77 Pac. 623.

Effect of Usury: Usurious contracts are not absolutely void, but the principal sum loaned thereon may be recovered by suit. *Portneuf Lodge v. Western, etc., Savings Co.* (1899) 6 Ida. 673; 59 Pac. 362.

Compound Interest Prohibited.

Sec. 1539. Compound interest is not allowed, but a debtor may agree in writing to pay interest upon interest over-due at the date of such agreement.

Historical: Rev. St. 1887, Sec. 1265. See 12 Ter. Ses. (1879) 7, Sec. 6.

Cited: *Blaine County v. Lincoln County* (1898) 6 Ida. 57; 52 Pac. 165. *Portneuf Lodge v. Western etc., Savings Co.* (1899) 6 Ida. 673; 59 Pac. 362. (Dist. op.) *Anderson v. Or. Mtg. Co.* (1902) 8 Ida. 418; 69 Pac. 130.

Interest on Interest: A stipulation in a promissory note that interest upon interest is to be paid, is in contravention of the provisions of this

section. *State v. Fitzpatrick* (1897) 5 Ida. 499; 51 Pac. 112.

Coupon Notes: Coupon notes, given for the interest of the principal debt, which, by their terms, draw interest after maturity, are in contravention of this section forbidding compound interest, and are usurious. *Vermont Loan Co. v. Hoffman* (1897) 5 Ida. 376; 49 Pac. 314. *Cleveland v. Western Loan & Savings Co.* (1901) 7 Ida. 477; 63 Pac. 885.

Penalty for Usury.

Sec. 1540. If it is ascertained in any suit brought on any contract, that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money or in property, such contract works a forfeiture of ten cents on the hundred by the year, and at that rate, upon the amount of such contract, to the school fund of the county in which the suit is brought, and the plaintiff must have judgment for the principal sum less all payments of principal or interest theretofore made, and without interest or costs. The court must render judgments in said action for ten per cent per annum upon the entire principal of said contract, against the defendant in favor of the State for the use of the school fund of the county,

whether the unlawful interest is contested or not; and in no case where unlawful interest is contracted for, must the plaintiff have judgment for more than the principal sum less the payments already made, whether the unlawful interest be incorporated with the principal sum or not. But no indorsee in due course of negotiable paper, is affected by any usury exacted by any former holder of such paper unless he have actual notice of the usury previous to his purchase; but in such case the judgment above provided in favor of the school fund must be entered against the drawer or maker, if a party to the action, and he may recover back the usury paid from the party who received the same.

Historical: Rev. St. 1887, Sec. 1266.

Cited: *Stevens v. Home Savings & Loan Assn.* (1898) 5 Ida. 741; 51 Pac. 779, 986. *Finney v. Moore* (1903) 9 Ida. 284; 74 Pac. 866. *Washington Co. Abstract Co. v. Stewart* (1904) 9 Ida. 376; 74 Pac. 955.

Strict Construction: The provisions of this section being quasi penal and providing for a forfeiture, will not be construed to include matters not expressly enumerated therein. *Finney v. Moore* (1903) 9 Ida. 284; 74 Pac. 866.

Test of Usury: The test of usury is whether or not a contract has been made whereby a greater rate of interest than that authorized by law may be charged, either directly or indirectly, and where the aggregate amount of interest to be paid falls within the terms of the usury statute, the contract will not be relieved from the operation of such statute because it reserves to the borrower an option to pay the entire debt at any time (the same being payable otherwise in installments), and the earliest interest installments fall within the rate of interest which may be legally charged. *Ford v. Washington Nat. Bldg., etc., Assn.* (1904) 10 Ida. 30; 76 Pac. 1010.

Form of Action: This section does not especially authorize any action on an usurious contract, but simply directs the judgment to be entered in an action brought to enforce the same. It does not preclude an action under Rev. St. Sec. 3364, (Code Sec. 3402), to compel the cancellation of usurious mortgages after the principal sum due thereon has been paid. *Portneuf Lodge v. Western, etc., Savings Co.* (1899) 6 Ida. 673; 59 Pac. 362.

The penalty herein provided for can only be adjudged in an action to enforce an usurious contract; this section does not prevent the mortgagor in an usurious transaction from suing for a cancellation of the mortgage. *Cleveland v. Western Loan, etc., Co.* (1901) 7 Ida. 477; 63 Pac. 885.

Provisions Mandatory: It is the duty of the trial court to see that the provisions of this section are carried out and to inflict the penalty therein

provided without suggestion so to do from any source. *Vermont Loan Co. v. Hoffman* (1897) 5 Ida. 376; 49 Pac. 314.

Since this statute imposes a penalty, a part of which goes to the school fund of the county, the effect of the same cannot be obviated by stipulation of parties, and the court must enter judgment in accordance with the statute, notwithstanding stipulations, to the contrary. *Ocobock v. Nixon* (1899) 6 Ida. 552; 57 Pac. 309.

It is not necessary to plead the defense of usury, but the rights of the parties and the duty of the court are fixed by this section. *Cleveland v. Western Loan, etc., Co.* (1901) 7 Ida. 477; 63 Pac. 885.

Proceedings by State: The State is not authorized to maintain an independent action to recover the penalty provided for in this section, but if the court fails to enter judgment for such penalty, the State should intervene by motion within the six months allowed by Sec. 4229 for the amendment of proceedings, upon notice to all parties to the record, and apply for a modification of the judgment so as to make it conform to this section. *State v. Eves* (1898) 6 Ida. 144; 53 Pac. 543.

The provisions of this section are not applicable to an action brought by the State to foreclose a mortgage, taken to secure the payment of a loan made from the permanent school fund; an unauthorized violation by the land board of Rev. St. Sec. 1265, by exacting usurious interest, cannot work a forfeiture or impose a penalty, directly or indirectly, upon the State. *State v. Fitzpatrick* (1897) 5 Ida. 499; 51 Pac. 112.

Right to Invoke Statute: This section applies only to actions where the lender or his assignee is plaintiff and the borrower is defendant. The grantee of an usurious mortgage who assumes the payment of the same, cannot set up the defense of usury or sue to cancel the mortgage after the payment of the principal on the ground of the usury contained therein. (Quarles, C. J., dissents.) *Anderson v. Or. Mtg. Co.* (1902) 8 Ida. 418; 69 Pac. 130. But the purchaser of premises covered by an usurious

mortgage may plead the defense of usury where he does not assume the mortgage debt, nor retain from the purchase price any sum for application upon the mortgage debt. *Ford v. Washington Natl. Bldg., etc., Assn.* (1904) 10 Ida. 30; 76 Pac. 1010.

Estoppel to Plead Usury: Since the State has an interest in the enforcement of this section, a private party cannot estop himself from asserting the plea of usury, *ib.*

Attorneys' Fees: In a suit upon an usurious contract, it is error to allow the plaintiff an attorney fee under the stipulation of the mortgage securing the debt. *Fidelity Savings Assn. v. Shea* (1899) 6 Ida. 405; 55 Pac. 1022.

Purging Usury: An usurious contract may be purged by giving a new

contract with the element of usury excluded, where no usury has been paid pursuant to the original contract. *Sanford v. Kunz* (1903) 9 Ida. 29; 51 Pac. 612.

Foreclosure of Usurious Mortgage: Where coupon interest notes, to secure which and the principal note to which they are attached, a mortgage is given, are void for usury, no action can be maintained to foreclose the mortgage until after the principal debt secured thereby becomes due, although the interest notes are, by their terms, declared to be due, and the mortgage authorizes foreclosure in case of default in the payment of the interest notes. *Vermont Loan & Trust Co. v. Tetzlaff* (1898) 6 Ida. 105; 53 Pac. 104.

CHAPTER 36.

WEIGHTS AND MEASURES.

Section
1541. Sealer of weights and measures.
1542. Standard of weights and measures.
1543. Same: Units of measurement.

Section
1544. Penalty for using false weights.
1545. Standard of measurement for stone masonry.

Note: Prior legislation on the subject of weights and measures may be found as follows: Rev. St. 1887, Secs. 1250-1251; Laws 1890-91, 204; Laws 1899, 142; Laws 1903, 87.

Sealer of Weights and Measures.

Sec. 1541. The Dairy, Food and Oil Commissioner shall be ex-officio inspector and sealer of weights and measures, and shall have the care and custody of the authorized public standards of weights and measures. He shall, as often as may be necessary, prove by such standard all weights and measures, scales and beams, which may be in the possession of any person, persons, firm or corporation doing business within the State, and shall seal such, when found to be accurate, by stamping on them the letter "I," which seal he shall have and keep for that purpose. He is hereby empowered to enter, during business hours, into any place of business or other places where such scales, beams or measures are kept or are being used, for the purpose of inspecting and testing the same. The State inspector and sealer of weights and measures shall receive no compensation for his services, but shall be allowed actual and necessary expenses while in the performance of his duties.

Historical: Laws 1905, 364, Sec. 2 (amended Laws 1907, 340, Sec. 1), and Sec. 5. "Commissioner" inserted

for "inspector" in the first line. The phrase "during business hours" is transposed to better express the sense.

Standard of Weights and Measures.

Sec. 1542. The standard of weights and measures of this State shall agree exactly with the standards recognized and furnished by the United States, unless otherwise provided for in this chapter, and shall, for the purpose of security and verification, be kept in the custody of the State sealer and inspector of weights and measures.

Historical: Laws 1905, 364, Sec. 1.

Same: Units of Measurement.

Sec. 1543. The standard gallon contains 231 cubic inches.
The standard quart contains 57.75 cubic inches.
The standard pint contains 28.875 cubic inches.
The standard gill contains 7.21375 cubic inches.
The standard barrel contains 31.50 gallons.
The standard hogshead contains 63 gallons.
Beer and milk measures shall contain the following capacities:
The gallon shall contain 282 cubic inches; the half gallon shall contain 141 cubic inches, and the quart one-half as much, and the pint one-half as much as the quart.
The hundredweight shall consist of 100 pounds, and twenty such weights are a ton. A box or packet of apples shall contain 2150.42 cubic inches.

Historical: Laws 1905, 364, Sec. 3.

Penalty for Using False Weights.

Sec. 1544. Any person, persons, firm or corporation, who shall use any scales, beam, weight or measure falsely, or who shall mark or stamp false weight or measure on any container, package or cask, or who shall sell, offer for sale, or have in his possession for sale, any article which does not conform to the United States standard or the standards designated in this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not to exceed three hundred dollars, nor less than twenty-five dollars for each offense, or imprisoned in the county jail not exceeding ninety days, nor less than thirty days.

Historical: Laws 1905, 364, Sec. 4.

Standard of Measurement for Stone Masonry.

Sec. 1545. The perch is the standard of measurement of stone masonry, and contains sixteen and one-half solid feet.

Historical: Rev. St. 1887, Sec. 1251.
12 Ter. Ses. (1883) 65, Sec. 1.

CHAPTER 37.

UNCLAIMED PROPERTY.

Section	Section
1546. Property held for charges.	1548. Disposition of proceeds.
1547. Sale of unclaimed property.	1549. Recovery of charges advanced.

Property Held for Charges.

Sec. 1546. When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchant, inn keepers or warehousemen for transportation or safe keeping, and is not delivered to the owner, consignee or other authorized person, the carrier, commission merchant, inn keeper or warehouseman may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

Historical: Rev. St. 1887, Sec. 1160.
California Legislation: Same: Pol.

Code 1872, Sec. 3152; Deering's Code, ib.; Kerr's Code, ib.

Sale of Unclaimed Property.

Sec. 1547. If no person calls for the property within four months from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, inn keeper or warehouseman, may sell such property, or so much thereof as will pay freight and charges, at auction to the highest bidder, first having given twenty days' notice of the time and place of sale, to the owner, consignee or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left, after paying freight, storage, cost of advertising and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

Historical: Rev. St. 1887, Sec. 1161.
 The phrase "at auction to the highest bidder" is transposed for grammatical reasons.

cept "sixty days" for "four months," line 1: Pol. Code 1872, Sec. 3153; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

California Legislation: Same, ex-

Disposition of Proceeds.

Sec. 1548. If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

Historical: Rev. St. 1887, Sec. 1162.
California Legislation: Same: Pol.

Code 1872, Sec. 3154; Deering's Code, ib.; Kerr's Code, ib.

Recovery of Charges Advanced.

Sec. 1549. When any commission merchant or warehouseman receives, on consignment, produce, merchandise or other property, and makes advances thereon for freight and charges, he may, if the same is not paid to him within four months from the date of such advances, cause the produce, merchandise or property on which the advances were made, to be advertised and sold as provided herein.

Historical: Rev. St. 1887, Sec. 1163.

California Legislation: Same, except "either to the owner or" inserted after "thereon," line 3, and "sixty

days" for "four months," line 4: Pol. Code 1872, Sec. 3156; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 38.

FIRE ESCAPES ON BUILDINGS.

Section

1550. Fire escapes to be provided for certain structures.

1551. Same: How attached.

Section

1552. Application to school districts.

1553. Violation of chapter a misdemeanor.

Fire Escapes to Be Provided for Certain Structures.

Sec. 1550. It is hereby made the duty of every person, firm or corporation, or his or its agents, officers or trustees, owning or having the management or control of any public hall, office building, hotel, school building, factory or other structure over two stories in height to provide and furnish such building with safe and suitable metallic,

iron or fireproof ladders of sufficient strength, and to permanently and securely attach the same to the outside or outer walls of such buildings, in such manner and in such position as to be adjacent to the windows, and convenient and easy of access to the occupants of such buildings in case of fire.

Historical: Laws 1903, 148, Sec. 1.

Same: How Attached.

Sec. 1551. Such metallic, iron or fireproof ladders must connect with each floor above the first, and be well fastened and secure and of sufficient strength, and must extend from the first story to the upper stories of such building or to the cornice thereof.

Historical: Laws 1903, 148, Sec. 2.

Application to School Districts.

Sec. 1552. The provisions of this chapter are hereby made applicable to the trustees of all school districts in this State, whether operating under the general school laws of the State, or whether they are independent districts operating under special charter.

Historical: Laws 1903, 148, Sec. 3.

Violation of Chapter a Misdemeanor.

Sec. 1553. Any person, firm or corporation, or his or its agents, officers or trustees, who shall fail to comply with the provisions of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punishable by imprisonment in the county jail for not less than three, nor more than six, months, or by a fine of not less than two hundred dollars, nor more than three hundred dollars, or by both such fine and imprisonment.

Historical: Laws 1903, 148, Sec. 4.

CHAPTER 39.

HUNTING ON INCLOSED LANDS.

Section

1554. Hunting on inclosed lands without permission.

Hunting on Enclosed Lands Without Permission.

Sec. 1554. Any person who shall hunt with dog or gun upon the cultivated or inclosed lands of another, without first obtaining permission from the owner or occupant thereof or his agent, shall be responsible to the owner of such cultivated or enclosed lands for all damages, and any person or persons violating the provisions of this chapter resulting in injuring or killing any livestock on said cultivated or enclosed lands, shall be deemed guilty of a misdemeanor.

Historical: Laws 1903, 105, Sec. 1.

CHAPTER 40.

EXPLOSIVES.

Section

1555. Explosives to be marked.
1556. Same.

Section

1557. Violation of chapter a misdemeanor.

Explosives to Be Marked.

Sec. 1555. It shall be unlawful for any person or persons, partnership or corporation, to sell or offer for sale, or take or solicit orders of sale, or purchase, or use, or have on hand or in store for the purpose of sale or use, in any state, any giant, hercules, atlas, venture, or any high explosive containing nitro-glycerine, unless on each and every box or package and wrapper containing any such giant, hercules, atlas, venture, or any other high explosive containing nitro-glycerine, there shall be plainly stamped or printed the name and place of business of the person or partnership or corporation by whom or which the same was manufactured, and the exact and true date of its manufacture, and the percentage of nitro-glycerine or other high explosive contained therein.

Historical: Laws 1907, 314, Sec. 1.

Same.

Sec. 1556. It shall be unlawful for any person or persons, partnership or corporation, to have two or more different dates on any such box or package containing giant, hercules, atlas, venture or any other high explosive containing nitro-glycerine; it shall further be unlawful for any person or persons, partnership or corporation, to use any box, package or wrapper formerly used by any other person or persons, partnership or corporation, in the packing of such giant, hercules, atlas, venture or other high explosive containing nitro-glycerine; and the name and date on such box or package shall be the same as on the wrapper containing such giant, hercules, atlas, venture or other explosive containing nitro-glycerine.

Historical: Laws 1907, 314, Sec. 2.

Violation of Chapter a Misdemeanor.

Sec. 1557. If any person or persons, partnership or corporation, shall violate any of the provisions of this chapter, such person or persons, the members of such partnership, or the officers or agents of such corporation, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court.

Historical: Laws 1907, 314, Sec. 3.

TITLE 9

THE PUBLIC LANDS

Chapter

1. Organization of State Land Department.
2. Appraisalment, lease and sale of State lands.
3. Sales of timber on State lands.

Chapter.

4. Prevention of forest fires.
5. Carey act lands.
6. Reservoirs and rights-of-way.
7. Miscellaneous provisions.

Note: The chapters of this title prescribing the organization of the State Land Department and the manner of selling and leasing State lands, seems to follow in a general way the Colorado law. See Mill's An. St. Vol. 2, Secs. 3627-3662. Legislation prior to the act of 1905, on which this title is primarily based, is as follows: Laws 1890-91, 109; Laws 1893; 139; Laws 1899, 72.

CHAPTER 1.

ORGANIZATION OF STATE LAND DEPARTMENT.

Section

1558. Constitution of State Land Board.
1559. President of board: Quorum: Administering oaths.
1560. Meetings of board.
1561. Attorney General to represent State.
1562. Register of Land Board: Contests.
1563. Statements, reports and bond of Register.

Section

1564. State Land Commissioner and other appointees.
1565. False oath: Improperly divulging information.
1566. Fees of board.
1567. Deposit of papers with State Treasurer.
1568. Audit and payment of expenses.

Constitution of State Land Board.

Sec. 1558. The Governor, Secretary of State, Attorney General and Superintendent of Public Instruction being constituted a State Board of Land Commissioners by Section 7 of Article 9 of the Constitution of the State, as such board, have the direction, control and disposition of the public lands of the State. The board shall have an office in the Capitol building, in a room set apart by the Capitol Commission, which shall be in charge of the Register hereinafter provided for.

Historical: Laws 1905, 131, Sec. 1. The last sentence is taken from the first two sentences of Laws 1899, 282, Ch. 2, Sec. 5, re-enacting Laws 1895, 215, Ch. 2, Sec. 5. (The "Carey Act," Ch. 5 of this title.) "Register" is inserted for "secretary" on the authority of Laws 1905, 131, Sec. 30, impos-

ing the duties of the secretary of the old board on the Register.

Cross Reference: Board created by Const. Art. 9, Sec. 7. General duties of board: Const. Art. 9, Sec. 8. Duties of board with respect to State lands included in irrigation districts: Sec. 2439.

President of Board: Quorum: Administering Oaths.

Sec. 1559. The Governor shall be president of the board, but in his absence from any meeting, one of the members may act as president pro tempore, and shall preside at such meeting. A majority of

the members of said board shall constitute a quorum for the transaction of business. Each member of the board shall have power to administer oaths in a proceeding of any character which may be pending before said board.

Historical: Laws 1905, 131, Sec. 2.

Meetings of Board.

Sec. 1560. The board shall have a regular meeting on the second Wednesday in each month, and may hold such adjourned or special meetings as the board may direct, and may meet at any time on call of the president or majority of the board. The said board shall cause a complete record of their meetings and other proceedings to be kept in suitable books, and shall preserve all important papers and documents pertaining to the State lands and the business of said board. The meetings and proceedings of said board shall be regulated by such rules as the board may adopt.

Historical: Laws 1905, 131, Sec. 3.

Cross Reference: To set apart and

keep records of lands for Industrial Training School: Sec. 821.

Attorney General to Represent State.

Sec. 1561. The Attorney General shall represent or shall cause the State to be properly represented in all suits, actions, contests or controversies relating to or involving State lands or timber, before the several land offices in this State, before the general land office at Washington, D. C., and before the courts of this State and of the United States, and may employ a competent attorney or attorneys for that purpose, who shall be paid out of the fund provided for the land department of the State.

Historical: Laws 1905, 131, Sec. 4.

Employment of Counsel: Sec. 29 of the act of 1893, which was similar to this section in that it gave the secretary of the board power to cause the State to be represented in suits re-

lating to State lands, was held not to authorize the secretary to employ special counsel to represent the State in an action to foreclose a school fund mortgage. *State v. Fitzpatrick* (1897) 5 Ida. 499; 51 Pac. 112.

Register of Land Board: Contests.

Sec. 1562. The State Board of Land Commissioners are hereby authorized to appoint a Register of the State Board of Land Commissioners, who is not a member of said board, whose salary shall be two thousand five hundred dollars per annum. It shall be the duty of the Register to keep the records of the State Board of Land Commissioners, to make out and countersign all patents and leases issued by the president of the said board to purchasers and lessees of State lands, and to keep a suitable record of the same; to file and preserve bonds of lessees and those given by purchasers to secure deferred payments; to make and deliver to purchasers suitable certificates of purchase; to have the custody of the seal of the State Board of Land Commissioners; to keep the minutes of the said board, and to perform such other duties concerning the land affairs of the State as the said board may direct.

It shall also be the duty of the Register in any or all contested cases, at the direction of the board, when hearings are necessary and witnesses may be required to be examined, to set a date for hearing such cases. The Register shall duly advise the contestants

and their accredited attorneys of the date set for such hearings, and on the date appointed the Register is hereby empowered to administer oaths and to hear and receive evidence, after the manner and procedure established by the United States in the district land offices, or in accordance with the rules that are or may be adopted by the board governing such cases. All evidence given and provided in such cases before the Register, shall be at the contestant's own cost, and shall be fully transcribed and arranged, and shall form a part of the records of the office of the State Board of Land Commissioners. The Register shall, as soon as convenient after such hearings, present a full transcript of the proceedings to the State Board of Land Commissioners, who shall render a decision in accordance therewith. The Register shall be provided with a suitable office, office furniture, stationery and postage by the Secretary of State.

Historical: Laws 1905, 131, Sec. 5; amended Laws 1907, 312, Sec. 1. By Section 30 of the act the powers previously exercised by the Attorney General as secretary were devolved

on the Register. That section is given effect in these Codes by inserting "Register" in place of "secretary" in all cases where the latter word formerly appeared.

Statements, Reports and Bond of Register.

Sec. 1563. On the first business day of each quarter the Register shall forward to the State Auditor and Treasurer a statement in duplicate of the amount of moneys received and deposited from all sources. Such statement shall show the class and character of the lands sold or leased, and the amounts of moneys received from all other sources; and on or before the first day of December immediately preceding the meeting of the Legislature, he shall make a report to the Governor of the business of his office, the transactions of the State Board of Land Commissioners and the land affairs of the State, showing, by tables, the land belonging to the several funds of the State, to whom sold, the amount leased, and the receipts from all sources; and said reports shall contain any such other items of information concerning State lands as the State Board of Land Commissioners may deem worthy of publication. Before assuming the duties of his office, the said Register shall give a bond in the sum of twenty thousand dollars, conditioned upon the faithful discharge of his duties. The said bond shall be approved by the State Board of Land Commissioners and filed with the Secretary of State. .

Historical: Laws 1905, 131, Sec. 6.

State Land Commissioner and Other Appointees.

Sec. 1564. The State Board of Land Commissioners shall appoint a State Land Commissioner, who shall, when directed by the board, and with such assistants as the board may appoint, select, locate and appraise all lands which are now, or may be hereafter, granted to this State by the United States for any purpose whatever, and who shall perform such other duties as shall be required of him by the board, or as shall be prescribed by its rules. He shall be paid a salary of two thousand dollars per annum, and his actual, necessary expenses while away from the capital of the State on business for the board. Said Land Commissioner and his assistants shall each take the oath of office and shall give bond in such sums

as the board may fix, conditioned upon the faithful performance of their duties; said bonds to be approved by the board and filed with the Secretary of State. Said assistants shall receive such compensation as the board may prescribe, not to exceed five dollars per day, and their actual and necessary expenses while away from the **capital of the State on business for the board.** The board may employ necessary clerical or other assistants for carrying on the business of the State Land Department and fix their compensation. The Register, State Land Commissioner, and other appointees of the board shall hold their respective positions during the pleasure of the board.

Historical: Laws 1905, 131, Sec. 8.

False Oath: Improperly Divulging Information.

Sec. 1565. If the State Land Commissioner, or any State land selector, appraiser, or timber cruiser or appraiser, or other appointee or employee of the State Board of Land Commissioners, shall, knowingly, make a false oath concerning the selection or appraisal of any State lands, or the timber thereon, or knowingly or wilfully divulge anything, or give any information in regard to such land other than to the State Board of Land Commissioners, or the Register of said board, or the State Land Commissioner, he shall forthwith be removed from office, and shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the Penitentiary for a period not exceeding two years, or be fined not exceeding one thousand dollars, or shall suffer both such fine and imprisonment.

Historical: Laws 1905, 131, Sec. 9. | is slightly changed to express the
The phraseology of the last two lines | sense.

Fees of Board.

Sec. 1566. The said board shall collect the following fees:

For filing each application to lease or purchase, fifty cents.

For recording each lease of one section, or less, one dollar, and for each additional section or fraction thereof, twenty-five cents.

For granting and recording a right-of-way, five dollars.

For issuing each certificate of purchase of one section, or less, two dollars, and for each additional section, or fraction thereof, fifty cents.

For making duplicate certificates of purchase, each, two dollars.

For issuing more than one certificate, on each purchase of State lands, made by one party, two dollars; for each additional certificate so issued, fifty cents.

For making and recording each patent, two dollars.

For making each township plat, and date thereon, two dollars.

For recording assignment of leases and certificate of purchase, fifty cents.

For making certified copies of papers, or records, the same fees as are provided to be charged by the Secretary of State for like services.

All moneys collected for fees shall be paid to the Treasurer of the State quarterly, as hereinbefore provided, and shall be credited to the general fund: *Provided, however,* That in all cases where

filing, or other fees, or rent moneys, have been paid to the said board, by two or more applicants for the same lands, such fees, or rent moneys, may be returned to the unsuccessful applicant from any funds in the possession of said board: *Provided*, That such payments shall be made out of the fund to which they have been credited.

Historical: Laws 1905, 131, Sec. 7.

Cross Reference: Fees of Secretary of State: Sec. 99.

Deposit of Papers With State Treasurer.

Sec. 1567. All valuable papers and securities, or any portion thereof, pertaining to the business of the land department, may, by direction of the State Board of Land Commissioners, be deposited with the State Treasurer for safe keeping in the fireproof vault and fire and burglar-proof safe provided for the Treasurer's department. Upon such order being made by the board, the register shall prepare a list of such valuable papers and securities so ordered deposited, in triplicate, and shall take thereon the receipt of the Treasurer for such papers and securities, leaving one list with the Treasurer, filing one with the State Auditor and preserving one in the office of the board. For the safe keeping of such papers and securities, and their return to the State Board of Land Commissioners when required at any time, the State Treasurer shall be liable on his official bond.

Historical: Laws 1905, 131, Sec. 29.
First sentence re-written to conform to existing conditions—the vault and

safe referred to in the section having been provided. See Laws 1905, 31; Codes, Sec. 118a.

Audit and Payment of Expenses.

Sec. 1568. All expenses incurred by the State Board of Land Commissioners, or by any person employed by said board, in accordance with the provisions of this title, shall be audited by the State Board of Examiners and paid out of the fund provided for the State land department.

Historical: Laws 1905, 131, Sec. 26.

CHAPTER 2.

APPRAISEMENT, LEASE AND SALE OF STATE LANDS.

Section

- 1569. Appraisement of land.
- 1570. Abstracts of State lands.
- 1571. Duplicate abstracts to be sent to county treasurer.
- 1572. Leases.
- 1573. Same: Rent to be paid in advance.
- 1574. Same: Term: Renewal.
- 1575. Same: Improvements: Mistake and fraud.
- 1576. Same: Bond of lessee: Cutting timber.
- 1577. Auction of lease.
- 1578. Occupation of land without lease.

Section

- 1579. Sale of State land.
- 1580. Same: Place and terms of sale.
- 1581. Same: Forfeiture of rights of purchaser.
- 1582. Sales in lots and blocks.
- 1583. Sales under government irrigation works.
- 1584. Supplying lost certificates.
- 1585. Land board to determine validity of claims.
- 1586. Lands exempt from taxation.
- 1587. Investment of funds derived from sales.

Appraisement of Land.

Sec. 1569. The board may cause all lands belonging to the State and the timber thereon, either separately or together, to be appraised, at such times, in such manner and by such means as the board shall decide, and may require the person or persons seeking such land or timber to be appraised, for the purpose of leasing or purchasing the same or for the purpose of purchasing the timber thereon, or otherwise, to pay the cost of such appraisement. All appraisements are under the control of the board, which may approve or disapprove of the same, in whole or in part, and may, at any time, direct a re-appraisement or new appraisement to be made. Whenever the board shall have acquired the cost of appraisement to be paid by the person or persons applying therefor, as provided in this section, the amount so paid shall be apportioned by the board to the several subdivisions of the land appraised, and when the land shall be thereafter sold, the purchaser, if he be other than the party seeking such appraisement, shall be required to pay the said sums, or the due proportion thereof, so apportioned by the board, in addition to the sum bid for the land; and the notice of sale of such lands shall specify the proportion of the cost of such appraisement apportioned to each tract, and that the purchaser, in addition to the sum bid for the land, will if he has not already paid the same, be required to pay the cost of the appraisement of such land as he shall purchase at said sale. Thereupon the sum or sums, or the due proportion thereof, so advanced by the party applying for such appraisement, shall be returned to the party paying the same. If said moneys shall have been paid into the State Treasury, the State Board of Examiners shall audit said claim, and the Auditor shall draw his warrant for the amount on the fund in which said moneys shall be.

Historical: Laws 1905, 131, Sec. 10.

Abstracts of State Lands.

Sec. 1570. The board shall cause suitable abstracts of all lands owned by the State, to be made and entered into suitable and well bound books. Such abstracts shall show, in proper columns and pages, the county in which each tract is situated; the section, part of section, township and range; whether timbered or not, mineral or non-mineral, in whole or in part; improved or unimproved, and the value of improvements, if any; the character, whether agricultural or grazing; the date of the appraisement; the value per acre; the date of sale or lease; the price per acre, if sold; the name of the purchaser or lessee; the amount paid in cash; the amount unpaid; the amount of the annual interest or rental; the date of deed from the State; number of sale, certificate or lease; the date of assignment, if any; and such other information as may be necessary to show a complete and full abstract of the condition of each tract of land acquired by the State, until final payment by the purchaser, and the issue of a deed for the land by the State.

Historical: Laws 1905, 131, Sec. 11.

Duplicate Abstracts to Be Sent to County Treasurer.

Sec. 1571. When the public lands or any portion thereof in any

county have been appraised, the board shall cause duplicates of such abstracts to be prepared and sent to the county treasurer of such county, and the county treasurer shall preserve the same as a record of his office, and enter the same in the books provided by the State for that purpose. Whenever, after the transmission of such duplicate abstracts to the county treasurer as aforesaid, other lands are appraised in that county, a copy of the appraisement in full shall be forwarded to such treasurer by the Register and shall be entered by said treasurer in said abstract books; and all sales of land or timber or both, and all leases executed affecting lands in said county, shall be reported to said treasurer, and shall be by him entered in said books.

Historical: Laws 1905, 131, Sec. 12.

Leases.

Sec. 1572. The State Board of Land Commissioners may lease any portion of the land of the State, at a rental of not less than five per cent per annum, on the valuation fixed by the State Board, except as hereinbefore provided. The lessee shall pay the annual rental to the register of the State Board of Land Commissioners, who shall receipt for the same, in the name of the board, on the lease, and file a duplicate receipt with the State Auditor. Upon receiving such annual rental, the Register shall immediately transmit the same to the State Treasurer and take his receipt therefor in duplicate, filing one receipt with the State Auditor and preserving the other in the office of the State Board of Land Commissioners. If stone, coal, coal oil, gas, or other mineral or precious metals be found upon the State land, such land may be leased for the purpose of obtaining therefrom the stone, coal, coal oil, gas, or other mineral, or precious metals, for such length of time, and conditioned upon the payment to the board of such royalty upon the product, as the State Board of Land Commissioners may determine.

Historical: Laws 1905, 131, Sec. 13.

Same: Rent to Be Paid in Advance.

Sec. 1573. All leases of State land, except mineral leases, shall be conditional upon the payment of rental annually in advance, and a violation of this condition shall work a forfeiture of the lease, at the option of the State Board of Land Commissioners, after thirty days' notice to the lessee, such notice being sent to the postoffice of the lessee, as given by himself to the Register of the State Land Board when the lease is issued.

Historical: Laws 1905, 131, Sec. 14.

Same: Term: Renewal.

Sec. 1574. No lease of State lands shall be for a longer term than five years. When any lease expires by limitation, the holder thereof may renew the same in manner as follows: At any time within the thirty days next preceding the expiration of the lease, the lessee, or his assigns, shall notify the Register of his desire to renew said lease. If the lessee and State Board agree as to the valuation of the land, a new lease may be issued, bearing even date with the expiration of the old one, and upon like conditions.

Historical: Laws 1905, 131, Sec. 15.

Same: Improvements: Mistake and Fraud.

Sec. 1575. Should any one apply to lease any of the lands belonging to the State upon which there are improvements belonging to another party, before the lease shall issue, he shall file in the office of the State Board of Land Commissioners a receipt showing that the price of said improvements, as agreed upon by the parties, or fixed by the State Board, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of said improvements, so agreed upon, or fixed by the board. If, by any mistake or error, any money has been, or shall hereafter be, paid on account of any sale or lease of State lands, or if any land or timber shall have been, or shall hereafter be, sold by the State, or lease executed, which land or timber shall have been, or shall hereafter be, by a court or tribunal of competent jurisdiction, adjudged to belong to another than the State of Idaho, at the date of such sale or the execution of such lease, a claim shall be presented to the State Board of Examiners, and, if authorized by them, the Auditor shall draw a warrant in favor of the party paying said money, and the State Treasurer shall pay the same out of the fund into which such money was deposited or placed. If through any fraud, deceit or misrepresentation, any party or parties shall procure the issuing of any lease for State lands the board shall have the authority to cancel such lease.

Historical: Laws 1905, 131, Sec. 16.

Same: Bond of Lessee: Cutting Timber.

Sec. 1576. In leasing State lands the State Board of Land Commissioners shall require of the lessee such a bond as shall secure the State against loss or waste, or occupation of the land for more than thirty days after the cancellation or expiration of the lease of said lessee, unless the said lessee becomes the purchaser of the land; and in no case shall a lessee be allowed to cut or use more timber than shall be necessary for the improvement of the land or for fuel for the use of the family of the lessee, and the cutting and hauling of timber to sawmills, to be sawed on shares, is expressly prohibited. A violation of this section by the lessee or party in possession shall constitute a misdemeanor.

Historical: Laws 1905, 131, Sec. 17.

Auction of Lease.

Sec. 1577. When two or more persons apply to lease the same land, then, in such cases, the Register shall, at a stated time, at his office in the Capitol building, auction off and lease said land to the applicant who will pay the highest annual rental therefor: *Provided*, That said State Board of Land Commissioners may arrange for said auction sale or sales to be held by some authorized person, at a designated place in the counties where the said lands are situate: *Provided*, In such case, the board may require the expenses thereof to be paid by the successful bidder: *Provided, further*, That said board shall have power to reject any and all bids made at such auction

sales when, in their judgment, there has been fraud or collusion, or for any other reason, which in the judgment of said board justifies the rejection of said bids. If the amount of the annual rental bid be not paid forthwith by the highest bidder, together with the expenses of such sale, if the board shall require the same to be paid as hereinbefore provided, said lease may be immediately re-offered again in the same manner at public auction.

Historical: Laws 1905, 131, Sec. 18.

Occupation of Land Without Lease.

Sec. 1578. All persons using or occupying any State land without a lease, and all persons who shall use or occupy State lands for more than thirty days after the cancellation or expiration of a lease, shall be regarded as trespassers, and upon conviction shall be fined in a sum of not less than twenty-five nor more than one hundred dollars, and in case of a lessee, the sureties on his bond shall be liable for all damages sustained by the State by reason thereof. All suits under this section shall be instituted by the Attorney General in the name of the State.

Historical: Laws 1905, 131, Sec. 27.

Sale of State Land.

Sec. 1579. The State Board of Land Commissioners may at any time direct the sale of any State lands, in such parcels as they shall deem for the best interest of the State. All sales of State lands shall be advertised in four consecutive issues of some weekly newspaper in the county in which such land is situate, if there be such paper, if not, then in some newspaper published in an adjoining county, and in such other paper or papers as the board may direct. The advertisement shall state the time, place and terms of sale, a description of the land and value of improvements, if any, thereon, and the minimum price per acre of each parcel as fixed by the board, below which no bid shall be received. In all sales the land shall be offered in legal subdivisions of not more than one hundred and sixty acres: *Provided*, That sales of State lands shall only be made to citizens of the United States and to those who shall have declared their intention to become such. No land shall be sold for less than its appraised value nor for less than ten dollars per acre. If the required sum be not paid forthwith by the highest bidder any lands upon which such payment shall not be made may be immediately re-offered at public sale as before. If any land be sold on which surface improvements have been made by a lessee, said improvements shall be appraised under the direction of the State Board of Land Commissioners. When lands on which improvements have been made, as above, are sold, the purchaser, if other than the owner of said improvements shall pay the appraised value of said improvements to the owner thereof, taking a receipt therefor, and shall deposit such receipt with the State Board of Land Commissioners before he shall be entitled to a certificate of purchase or patent of said land. All such receipts shall be filed and preserved in the office of said board.

Historical: Laws 1905, 131, Sec. 19.

Cross Reference: Not to exceed twenty-five sections of school land shall be sold in any one year, the sale to be in subdivisions of not to

exceed one hundred and sixty acres to any one purchaser at a price of not less than ten dollars per acre: Const. Art. 9, Sec. 8.

Same: Place and Terms of Sale.

Sec. 1580. All sales of State lands shall be held at the State Capitol, unless otherwise directed by the State Board of Land Commissioners. Any such sale held away from the State Capitol shall take place at the county seat of the county or of one of the counties in which such lands are situate, unless otherwise directed by the board. Terms of payment shall be as follows: Timber lands, and lands chiefly valuable for timber, cash on the day of sale; on other lands selling for ten dollars to twenty-five dollars per acre, ten per cent of the purchase money on the day of sale, the balance in eighteen equal annual payments at six per cent interest per annum. Lands selling at more than twenty-five dollars per acre, twenty per cent cash on day of sale, and the balance in sixteen equal annual payments at six per cent interest per annum, or the purchaser may make full payment with accrued interest at any time. Interest on deferred payments shall be payable annually in advance, on January first, and interest for the first year to January first next succeeding shall be paid at the time of purchase. When the conditions hereinbefore prescribed have been complied with, the State Board shall make and deliver to the purchaser, a certificate of purchase containing the name of the purchaser, a description of the land, the sum paid, the amount remaining due, and the date at which each of the deferred payments falls due, and the amount thereof, and the amount and date of the several payments of interest to be made thereon. Such certificates shall be signed by the Governor and countersigned by the Register, and a record of the same kept by him in a suitable book. When, in the judgment of the board, a bond by a purchaser of State lands is necessary, the State board shall require such purchaser to give a bond, upon such conditions as the board may determine. Whenever a purchaser of any State land shall have complied with all the conditions of the sale, and paid all purchase money with the lawful interest thereon, he shall receive a deed for the land purchased; such deed shall be signed by the Governor, and countersigned by the Register, and attested with the seal of the State Board of Land Commissioners, and said deed shall operate to convey to the purchaser a good and sufficient title in fee simple. All payments shall be made to the State Board of Land Commissioners.

Historical: Laws 1905, 131, Sec. 20.

Cross Reference: Sale of State

lands included within irrigation districts: Sec. 2439.

Same: Forfeiture of Rights of Purchaser.

Sec. 1581. If any purchaser of State land, after receiving a certificate of purchase, as provided in this chapter, shall fail to make any of the payments stipulated therein, and the same remains unpaid for thirty days after the time when it should have been paid, as specified in such certificate, the Register shall, by registered letter addressed to such delinquent purchaser at his last known post office address, notify such purchaser of such delinquency and of the amount

due, and that unless such amount be paid within sixty days after the date of mailing such letter and notice, the board will declare all rights of the purchaser in and to said land forfeited and the certificate and contract relating thereto annulled. After the expiration of said period of sixty days, the State Board of Land Commissioners shall declare such forfeiture, and shall annul said contract and certificate. Such action of the board shall be recorded in the minutes of the proceedings of the board, and a certified copy of such minutes, under seal of the board, be forwarded by the Register to the recorder of the county where such lands are situated for filing in his office, and when filed shall constitute notice of the facts therein stated. When such forfeiture shall have been declared and entered in the minutes, as hereinbefore provided, all rights of such purchaser in and to said land shall be and are extinguished, and the State Board of Land Commissioners may sell the land again: *Provided*, That in case of such default and declaration of forfeiture, all previous payments made by a purchaser on account of such land shall be forfeited to the State, and the title and right of possession to such land shall be in the State as if no sale had ever been made. All purchase moneys arising from the sale of State lands, shall without delay be paid by the State Board of Land Commissioners to the Treasurer, who shall receipt for the same, and the same shall be by him credited to the permanent fund to which the land sold belonged. All interest on such money, and all rents received from lands leased, shall be paid forthwith by the Register on behalf of the said board to the State Treasurer, and be by the Treasurer credited to the income fund to which the land belonged.

Historical: Laws 1905, 131, Sec. 21.

Sales in Lots and Blocks.

Sec. 1582. The State Board of Land Commissioners may cause any portion of State lands to be laid out in lots and blocks, and to be sold from time to time, at public auction, in such quantities and on such terms as shall enable the State to realize the best prices therefor; and such land shall not be sold except in lots and blocks, as herein provided.

Historical: Laws 1905, 131, Sec. 22.

Sales Under Government Irrigation Works.

Sec. 1583. Whenever the United States shall, through its proper officers, authorize the construction of any irrigation works in this State under the provisions of the reclamation act of June 17, 1902, no lands belonging to the State whose irrigation depends upon the construction of such works shall, after such authorization for construction shall have been publicly announced or communicated by such proper officer to the Governor of the State, be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the State, until the applicant therefor shall have fully complied with the provisions of the laws of the United States, and the regulations thereunder, concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued.

Historical: Laws 1905, 373, Sec. 2.

Supplying Lost Certificates.

Sec. 1584. Whenever a certificate of purchase shall be lost or wrongfully withheld by any person from the owner thereof, the State Board of Land Commissioners may receive evidence of such loss or wrongful detention, and upon satisfactory proof of the fact, may cause the certificate of purchase, or deed, as the case may be, to issue to such person or to his grantees or assigns, as shall appear to them to be the proprietor of the land described in the original certificate of purchase.

Historical: Laws 1905, 131, Sec. 22.

Land Board to Determine Validity of Claims.

Sec. 1585. The State Board of Land Commissioners may hear and determine the claims of all persons who may claim to be entitled, in whole or in part, to any lands owned by this State, and the decision of said board shall be final until set aside by a court of competent jurisdiction, and the board shall have power to establish such rules and regulations as, in their opinion, may be proper or necessary to prevent fraudulent applications.

Historical: Laws 1905, 131, Sec. 24.

Lands Exempt From Taxation.

Sec. 1586. All lands sold under the provisions of this chapter shall be exempt from taxation for and during the period of time in which the title to said land is vested in the State of Idaho, but the value of the interest therein of the purchaser may be taxed, which interest shall be determined by the amount paid on such land and the amount invested in improvements thereon at the date of such assessment.

Historical: Laws 1905, 131, Sec. 25.

Investment of Funds Derived From Sales.

Sec. 1587. The State Board may, at any meeting, make the necessary orders for the investment of the funds derived from the sale of the public lands of the State then in the State Treasury. The proceeds of the sales of public lands of the State may be invested for and on account of the specific purposes for which the lands were granted, in United States bonds. State bonds, school district bonds or State warrants, or loaned on first mortgage or improved farm lands within the State; but no loans secured by mortgage on such improved farm lands shall exceed in amount one-third of the market value of the lands, exclusive of buildings, given as security for such loan. Whenever the board shall order the investment of any part of the public school fund or any permanent fund of the State held for investment, the board shall notify the State Auditor and State Treasurer of such order and of the amount so ordered loaned, together with the name of the borrower, and the State Auditor shall draw a warrant for the amount stated in the notice in favor of the chairman of the board, and the State Treasurer shall pay such warrant out of the fund designated, upon the indorsement of such chairman and borrower. The rate of interest on loans secured by mortgage herein provided for shall be five per cent per annum.

Historical: Laws 1905, 131, Sec. 28.

Cross Reference: Restrictions on loan of educational funds: Const. Art. 9, Sec. 11.

Powers of Board: The board does not possess plenary power, but only limited power, such as is given it by

the Legislature. A regulation of the board requiring the payment of compound interest on mortgages given to secure a school fund loan, is in violation of the usury statutes and void. *State v. Fitzpatrick* (1897) 5 Ida. 499; 51 Pac. 112.

CHAPTER 3.

SALE OF TIMBER ON STATE LANDS.

Article

1. Sales of timber in general.

Article.

2. Installment sales.

ARTICLE 1.

SALES OF TIMBER IN GENERAL.

Section

- 1588. Preservation of trees on State lands.
- 1589. Application for permit to cut trees.
- 1590. Same: Deposit covering estimated costs.
- 1591. Publication of application.
- 1592. Water master may file protest.
- 1593. Land board to act on application.

Section

- 1594. Proceedings on sale of trees.
- 1595. Persons cutting trees to furnish bond.
- 1596. Definition of tree.
- 1597. Violation of provisions a misdemeanor.
- 1598. County attorneys to prosecute.

Note: Penalty for destruction of timber on State lands: Sec. 6987; for cutting timber for shipment: Sec. 6988.

Preservation of Trees on State Lands.

Sec. 1588. No trees standing on lands of the State, which lands when cleared of trees will not be suitable for cultivation and raising crops, and no trees needed to conserve the snows, ice or water of any irrigation district, shall be cut from any part of the public lands belonging to the State, except as hereinafter provided.

Historical: Laws 1905, 145, Sec. 1.

Application for Permit to Cut Trees.

Sec. 1589. Any person desiring to cut trees upon any lands owned by the State shall make application in writing to the Register of the State Board of Land Commissioners, which application shall contain: (a) A complete legal designation of the lands upon which it is desired to cut the trees; (b) the purpose for which such trees are to be used; (c) that he will carefully protect from fires or other damage all trees less in size than those desired to cut; (d) that he will entirely remove, as directed by the State Board of Land Commissioners, all cut trees and their branches in such manner that fires may not consume the smaller trees; (e) that such trees as are desired for use are not necessary for the conservation of the irrigation waters of any irrigation water shed, or that the same are on lands of the State, which lands when cleared of trees will not be suitable for cultivation and raising of crops.

Historical: Laws 1905, 145, Sec. 2.

Same: Deposit Covering Estimated Costs.

Sec. 1590. The Register of the State Board of Land Commission-

ers shall, on receiving such application, refer the same to the State Land Commissioner, who shall estimate the cost of examining and reporting upon the said application, and the said Register of the State Board of Land Commissioners shall thereupon require of the applicant a certified check, payable to the State Board of Land Commissioners, covering the costs as estimated by the said State Land Commissioner, as well as the costs of all other proceedings, directed in this article, to determine whether such trees can be lawfully cut.

Historical: Laws 1905, 145, Sec. 3.

Publication of Application.

Sec. 1591. The Register of the State Board of Land Commissioners shall cause the application of said person to cut trees to be published, for the full period of thirty days, in one or more daily or weekly newspapers having such circulation as will fully advise the water users of the irrigation area upon the water shed on which such trees are growing, of the pendency of such application, and that protests to the granting of the application must be made within twenty days from the date of the last publication, which date shall be given in such published notice.

Historical: Laws 1905, 145, Sec. 4.

Water Master May File Protest.

Sec. 1592. Any water master, upon petition in writing addressed to him and signed by twenty-five or more bona fide water users in the irrigation district thus affected, may, within a period of thirty days after the first publication of said application, file a protest in writing with the State Board of Land Commissioners, against allowing such trees to be cut.

Historical: Laws 1905, 145, Sec. 5.

Land Board to Act on Applications.

Sec. 1593. Upon the expiration of the time for filing protests as provided in this article, the Register of the State Board of Land Commissioners shall refer all papers to said board, who may, thereupon, and under such conditions as to the payment of the cost of such proceeding as they may impose, cause the lands designated in the application and the trees growing thereon to be inspected, and, if deemed best, such trees to be appraised, and may refer all papers to the State Land Commissioner, who shall thereupon, personally or by his assistants, inspect the designated lands and the trees growing thereon, and, if directed by the board, shall appraise the same and report in writing to the board. The board shall consider said protest or protests and the report of the State Land Commissioner or his assistants, and shall decide that such trees may be properly disposed of, or against allowing the same to be done. But no trees less than twelve inches in diameter, two feet above the ground, shall be allowed to be cut by any person whomsoever; except that for mining and fencing purposes, trees may be cut not less than five inches in diameter, for use within the county where cut.

Historical: Laws 1905, 145, Sec. 6.

Proceedings on Sale of Trees.

Sec. 1594. Should the State Board of Land Commissioners decide that the trees desired may be properly disposed of, the Register shall, if any protest has been filed, at once notify by registered letter such water master or water masters. Such protestant or protestants shall thereafter be allowed fifteen days in which to commence, in the District Court, proceedings to restrain the State Board of Land Commissioners from disposing of said trees, and the said State Board of Land Commissioners shall make no defense to the proceedings, if any, so brought, except at the cost of the applicant desiring to cut such trees from the State lands. Should there be no protests, or should such court proceedings fail, said trees desired by said applicant shall be advertised in one or more newspapers, to be designated by the board, one of which shall be in the county where such timber is located, and, if in more than one county, then in some one newspaper in each of said counties, for a period of four weeks. Thereafter said trees shall be publicly sold at the State Capitol, in the City of Boise, or at some other place designated by said board in said notice, to the highest bidder, and if such highest bidder be some person other than the applicant, he shall pay the costs and disbursements incurred by said applicant in the matter of said application, as herein provided, the amount of which shall be determined by the board or by the person designated by the board to make such sale, not including compensation to his attorney, and shall be returned to the applicant; and no bids shall be received which do not include the costs incurred by said applicant in determining the right to cut the desired trees. Should the State Board of Land Commissioners decide adversely to the cutting of trees desired by the applicant, or should an order of court bar a sale, said applicant shall not recover any of the costs incurred by him by reason of said application. The proceeds of the sales of the trees sold under the provisions of this article shall forthwith be paid by the State Board of Land Commissioners to the State Treasurer, to be by him placed in the permanent fund entitled to the proceeds of sales of the land upon which said trees are standing.

Historical: Laws 1905, 145, Sec. 7.

Persons Cutting Trees to Furnish Bond.

Sec. 1595. The State Board of Land Commissioners shall require of all persons cutting trees upon State lands a bond in a sufficient amount, with good and approved sureties, for the carrying out in good faith of the provisions of this article.

Historical: Laws 1905, 145, Sec. 8.

Definition of Tree.

Sec. 1596. For the purpose of this article the word "tree" shall be held to mean all vegetable growth of a woody texture of any size whatsoever. No lands contemplated in this article shall be leased for any purpose whatsoever that will destroy the tree growth.

Historical: Laws 1905, 145, Sec. 9.

Violations of Provisions a Misdemeanor.

Sec. 1597. Any person violating any of the provisions of this

article shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of not less than ten nor more than one hundred dollars, or be punished by imprisonment of not less than sixty days, or by both fine and imprisonment, as the court may direct. Suit may also be brought in the name of the State whenever such damage has been caused by any violation of the provisions of this article, by any person or persons engaged in any business or pleasure pursuit whatever.

Historical: Laws 1905, 145, Sec. 14.
 "Be punished" inserted before "by imprisonment" to complete the sense.

County Attorneys to Prosecute.

Sec. 1598. The prosecuting attorneys of the various counties of the State are hereby directed to prosecute in the name of the State all cases arising under this article.

Historical: Laws 1905, 145, Sec. 15.

ARTICLE 2.

INSTALLMENT SALES.

Section	Section
1599. Terms of installment sales.	1601. Permit to cut timber.
1600. When timber may be cut: Payment of installment.	1602. Time in which to cut timber.
	1603. Other statutes unaffected.

Terms of Installment Sales.

Sec. 1599. Timber and timber lands belonging to the State of Idaho may be sold by the State Board of Land Commissioners, at their option, upon payment of installments of the purchase price thereof as follows: Twenty per cent of the purchase price thereof must be paid at the time of purchase, and the balance of such purchase price in from ten to twenty equal annual installments, with annual interest thereon at the rate of six per centum per annum payable in advance; the number of installments to be fixed by the State Board of Land Commissioners at the time of purchase.

Historical: Laws 1907, 193, Sec. 1.

When Timber May Be Cut: Payment of Installment.

Sec. 1600. No timber shall be cut under the above provisions except in the following manner, to-wit: Thirty days written notice shall be given to the State Board of Land Commissioners, by filing such notice with the Register, of the particular land, describing it by legal subdivisions, upon which it is desired to cut timber. On or before the expiration of such time, there shall be paid into the State treasury, by the purchaser, to the credit of the proper fund, the full amount of the appraised value of such subdivision or subdivisions, or in case the purchase is of timber only, then the amount paid in shall be the full amount of the appraised value of the timber on such subdivision. The register shall certify to the State Treasurer the amount of the appraisement on the land or timber before such payment is made. All payments so made shall be credited upon the final installment of the purchase price, or if more than sufficient to pay the final installment, then upon the next installment, all such pay-

ments thereafter being credited upon the latest installment to fall due.

Historical: Laws 1907, 193, Sec. 2.

Permit to Cut Timber.

Sec. 1601. No timber shall be cut under the provisions of this article until after the first payment of twenty per cent is made, and the additional payment is paid into the State Treasury as provided in the preceding section. The receipt of the Treasurer for the money so paid shall be filed with the register of the State Board of Land Commissioners, who shall thereupon issue a permit to cut the timber for which payment has been so made. Said permit shall be issued under rules and regulations made by the State Land Board. The right to cut timber under the terms hereof does not accrue until the permit therefor is issued.

Historical: Laws 1907, 193, Secs. 3, 5.

Time in Which to Cut Timber.

Sec. 1602. The timber cut on lands where the timber only is purchased, must be cut within ten years from the date of purchase, or such further time, not exceeding twenty years, as may be ordered by the State Board of Land Commissioners, said order to be made at the time of purchase. All timber remaining after such period shall be the property of the State.

Historical: Laws 1907, 193, Sec. 4.

Other Statutes Unaffected.

Sec. 1603. Nothing in this article shall be construed as changing or modifying any other statute relative to the sales of timber and timber lands, but shall be construed as being in addition thereto, and as authorizing the sale of timber and timber lands on payment of installments as provided in this article.

Historical: Laws 1907, 193, Sec. 6.

CHAPTER 4.

PREVENTION OF FOREST FIRES.

Section	Section
1604. Fire districts and wardens.	1609. Close season for fire.
1605. Duties of fire wardens.	1610. Care of railroad right-of-way.
1606. Permit to set out fires.	1611. Officers charged with enforcement of law.
1607. Engines to use spark arresters.	1612. Employment of persons to enforce chapter.
1608. Violations of chapter a misdemeanor.	

Fire Districts and Wardens.

Sec. 1604. The State Board of Land Commissioners of the State of Idaho shall divide the State into districts to be known and designated as fire districts, having due regard in establishing the boundaries thereof to the area of forests or timber lands therein; they shall appoint, upon the application of any owner or owners of land or other property within the State, one fire warden within each of the

districts of the State, and such fire wardens, so appointed, shall be paid by said property owners applying for the appointment of the same, and shall in no case be paid by the State. All such appointments shall be made for one year, unless sooner revoked, and the State Board of Land Commissioners may at any time revoke any such appointment, upon good cause shown. The fire wardens, so appointed, shall appoint, as deputy fire wardens, within their respective districts, such persons as shall be designated by such owners of land or other property, who shall also be paid by the person or persons securing their appointment. Their employment shall not be for any definite time, and they shall be discharged immediately by the fire warden of their district upon the request of such person or persons at whose instance they were appointed. The fire warden and deputy fire wardens shall have and exercise police powers while engaged in performing the duties of their respective offices: *Provided*, That the State Board of Land Commissioners shall prepare an abstract of the penal laws relating to forest and prairie fires, together with proper regulations and suggestions for the prevention and control thereof, and before April first in each year shall forward printed copies to all fire wardens, railroad companies, and chairmen of county boards. The wardens shall post such abstract in numerous conspicuous places in their respective districts.

Historical: Laws 1907, 18, Sec. 1.

Duties of Fire Wardens.

Sec. 1605. The fire wardens shall enforce the provisions of this chapter. They and the deputy fire wardens shall patrol their districts in dry seasons. They shall promptly investigate each prairie and forest fire within their respective districts. Each fire warden shall make an annual report to the State Board of Land Commissioners of the fires within his respective district, together with the cause thereof, the property destroyed and its value, the lives lost, if any, and the means used to combat such fire, and any additional facts required by the State Board. Each warden shall co-operate with the warden in the adjoining district, and, in his absence, assume control therein. Each may arrest, without a warrant, any person found violating any provision of this chapter, and take him before a magistrate and there make complaint; and, when a warden shall have information that such violation has been committed, he shall make similar complaint. Wardens shall go to the place of danger to control or prevent fires, and, in emergencies, may employ or compel assistance, and the compensation for such service compelled shall not exceed two dollars and fifty cents per day, exclusive of subsistence and reasonable traveling expenses, and such compensation shall be payable for each day in advance on demand.

Historical: Laws 1907, 18, Sec. 2.

Permit to Set Out Fires.

Sec. 1606. It shall be the duty of the fire warden of each fire district to issue written or printed permits during permit season, to any and all persons named in an application to set out fires. Said application shall state the general description of the land upon which

it is desired to set out fires and the extent of the slashing or burning desired to be burned. Said permit season shall be from June first to October first of each year. Said permits shall fix the time for setting out fires on any three consecutive days therein named, and not less than ten days from the date of such permit, and such fires shall be set at no time when the wind is blowing to such an extent as to cause danger of the same getting beyond the control of the person setting out said fire, or without sufficient help present to control the same, and the said fire shall be watched by the persons setting out the fire until the same is out. Upon granting said permit the fire warden shall be present at said proposed burning, or notify, at the earliest possible moment, some qualified and acting deputy fire warden in the vicinity of said proposed burning to be present thereat, and upon good cause may revoke or postpone said permit upon notice to said applicant.

Historical: Laws 1907, 18, Sec. 3.

Engines to Use Spark Arresters.

Sec. 1607. From May first to October first of each year, it shall be unlawful for any person, firm or corporation to use any spark emitting locomotive, logging engine, portable engine, traction engine or stationary engine, located in a timber district without the use of a good and efficient spark arrester. Any person, firm or corporation who shall fail to provide and use such spark arrester upon any engine, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than twenty-five dollars nor more than one hundred dollars for each day such engine or locomotive is so used.

Historical: Laws 1907, 18, Sec. 4.

Violation of Chapter a Misdemeanor.

Sec. 1608. Every warden or deputy warden, and every person lawfully commanded to assist in enforcing any of the provisions of this chapter, who shall unjustifiably refuse or neglect to perform his duty; every person who shall kindle a fire on or near to forest or prairie land and leave it unextinguished, or be a party thereto; every person who shall use other than incombustible wads for firearms, or carry a naked torch, fire brand or exposed light in or near to forest land; and every person who shall deface, destroy or remove any abstract or notice posted under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars.

Historical: Laws 1907, 18, Sec. 5.

Close Season for Fires.

Sec. 1609. The period from May first to October first in each year shall be known as the close season, during which time it shall be unlawful for any camper, farmer, logger or other individual, firm or corporation to set out, or cause to be set out, fires in slashings, down or fallen timber, or on timber lands, or in the vicinity or grain fields, for the purpose of clearing land of brush, grass or other inflammable material without first obtaining a permit in writing, or print, from the fire warden of the district as provided in Section

1606, and at no time shall any fire be set out when the wind is blowing to such an extent as to cause danger of the same getting beyond the control of the person setting out such fire, or without sufficient help present to control the same; and the same shall be watched by the person setting the fire until the same is out. Any person violating any of the provisions of this section shall be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than one month, nor more than six months: *Provided*, That this section shall not apply to any person or persons setting out back fires for the purpose of stopping or checking a fire then burning. The fire warden shall keep a complete copy of permits issued.

Historical: Laws 1907, 18, Sec. 6.

Care of Railroad Right of Way.

Sec. 1610. Every person, firm or corporation operating a railroad, shall keep the ground for fifty feet on each side of the center of the track, or such portion thereof as may be owned or controlled by such person, firm or corporation, clear of combustible materials, except ties and other materials necessary for the maintenance and operation of the road, from May first to October first of each year. No person, firm or corporation shall permit any of his or its employees to leave a deposit of fire, live coals or ashes in the immediate vicinity of woodland or lands liable to be overrun by fire, and every engineer, conductor, trainman or section man discovering fire adjacent to the track shall report the same promptly at the first telegraph or telephone station reached by him. At the beginning of the close season every such person, firm or corporation shall give his or its employees particular instructions for the prevention and extinguishment of fires, and shall cause warning placards to be conspicuously posted at every station within this State, and when a fire occurs near the line of his or its road, shall concentrate such help and adopt such measures as shall be available for its extinguishment. Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor, and shall be subjected to a penalty of not more than one hundred dollars for each offense, and any railroad employee violating the same shall be guilty of a misdemeanor, and shall be punished by a fine of not less than five dollars nor more than fifty dollars.

Historical: Laws 1907, 18, Sec. 7.

Officers Charged With Enforcement of Law.

Sec. 1611. The State Land Commissioner and his assistants, or land appraisers and selectors, game wardens and their deputies, and all peace officers of the State, are hereby charged with the enforcement of this chapter, and shall have full power to arrest violators of the provisions of this chapter, and deliver them to the nearest magistrate to be dealt with according to law; and it is hereby made the duty of such officers having a knowledge of any violation of the provisions of this chapter, to file complaint in a court of competent jurisdiction against such person.

Historical: Laws 1907, 18, Sec. 8.

Employment of Persons to Enforce Chapter.

Sec. 1612. For the purpose of carrying out and enforcing the provisions of this chapter relating to fires in forest areas in this State, and for the prevention and extinguishment of the same, the State Board of Land Commissioners are hereby empowered to employ such number of persons as in their judgment shall be necessary. Such persons so appointed are empowered to arrest any violator of the provisions of this chapter relating to fires, and deliver him to any probate judge or justice of the peace of the county where such arrest shall be made.

Historical: Laws 1907, 18, Sec. 9.

CHAPTER 5. CAREY ACT LANDS.

Section

- 1613. Acceptance of the Carey act.
- 1614. Duties of Register.
- 1615. Proposals to construct irrigation works.
- 1616. Certified check to accompany proposal.
- 1617. Application for appropriation permit to be filed.
- 1618. Submission of proposal to State Engineer.
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- 1621. Contract of proposed contractor.
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Section

- 1624. State not to be responsible for work.
- 1625. Publication of notice of opening.
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- 1630. Rights-of-way for canals.
- 1631. Board to prescribe rules: Reports of contractors.
- 1632. Fees of board.
- 1633. Board to issue report.
- 1634. Suits by board.

Acceptance of the Carey Act.

Sec. 1613. The State of Idaho hereby accepts the conditions of Section 4 of an act of Congress, entitled, "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1894, and for other purposes," approved August 18, A. D. 1894, together with all the grants of land to the State under the provisions of the aforesaid act. The selection, management and disposal of said land shall be vested in the State Board of Land Commissioners, as constituted by Section 7 of Article 9 of the Constitution of the State of Idaho. Said State Board of Land Commissioners shall be hereinafter designated as the "board."

Historical: Laws 1899, 282, Ch. 2, Secs. 1, 2; re-enacting Laws 1895, 215, Secs. 1, 2. The act of Congress referred to in the section popularly known as the "Carey act," may be

found in U. S. Comp. Stat. 1901, Vol. 2, pp. 1554-1556.

Comparative Legislation: See Rev. St. Wyoming, 1899, Secs. 934, 935.

Duties of Register.

Sec. 1614. The Register shall have the custody of the records of the board; and shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this chapter; keep for public inspection maps or plats, on a scale

of two inches to the mile, of all lands selected; receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required by the board in carrying out the provisions of this chapter. He shall have authority to administer oaths whenever necessary in the performance of his duties as secretary of the board.

Historical: Laws 1899, 282, Ch. 2, Sec. 5; re-enacting Laws 1895, 215, Ch. 2, Sec. 5. Omitting the first two sentences relating to the offices of the board, which have been transferred to Sec. 1558. "Register" inserted for

"secretary," in conformity to Laws 1905, 131, Sec. 30.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 939.

Proposals to Construct Irrigation Works.

Sec. 1615. Any person, company of persons, association or incorporated company, constructing, having constructed or desiring to construct, ditches, canals or other irrigation works to reclaim land under the provisions of this chapter, shall file with the board a request for the selection, on behalf of the State, by the board, of the land to be reclaimed, designating said land by legal subdivisions. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the land asked to be selected. The proposal shall be prepared in accordance with the rules of the board and with the regulations of the Department of the Interior; and shall be accompanied by the certificate of the State Engineer that application for permit to appropriate water has been filed in his office, together with the State Engineer's report thereon. It shall state the source of water supply, the location and dimensions of the proposed works, the estimated cost thereof, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed, said perpetual rights to embrace a proportionate interest in the canal or other irrigation works, together with all the rights and franchises attached thereto. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its directors and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the board to determine his or their financial ability to carry out the proposed undertaking.

Historical: Laws 1899, 282, Ch. 2, Sec. 6, re-enacting Laws 1895, 215, Ch. 2, Sec. 6.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 940.

Certified Check to Accompany Proposal.

Sec. 1616. A certified check for a sum not less than two hundred and fifty dollars, not more than two thousand five hundred dollars, as may be determined by the rules of the board, shall accompany each request and proposal, the same to be held as a guarantee of the execution of the contract with the State, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the board, and to be forfeited to the State in case of failure of said parties to enter into

a contract with the State in accordance with the provisions of this chapter.

Historical: Laws 1899, 282, Ch. 2, Sec. 7; re-enacting Laws 1895, 215, Ch. 2, Sec. 7.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 941.

Application for Appropriation Permit to Be Filed.

Sec. 1617. The person, company of persons, association or incorporated company making application to the board for the selection of lands by the State, shall have filed with the State Engineer an application for a permit to appropriate water for the reclamation of the lands described in the request to the board. This application for a permit shall be of a form prescribed by the State Engineer and shall be accompanied by two copies of a map of the land to be selected, and it shall show accurately the location and dimensions of the proposed irrigation works. The maps of the lands and proposed irrigation works shall be prepared in accordance with the regulations of the State Engineer's office and the rules of the Department of the Interior.

Historical: Laws 1899, 282, Ch. 2, Sec. 8; re-enacting Laws 1895, 215, Ch. 2, Sec. 8.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 942.

Submission of Proposal to State Engineer.

Sec. 1618. Immediately upon the receipt of any request and proposal, as designated in Section 1615, it shall be the duty of the Register to examine the same and ascertain if it complies with the rules of the board and the regulations of the Department of the Interior. If it does not, it is to be returned for correction; but, if it does so comply, it shall be submitted to the State Engineer, who shall examine the same and make a written report to the board, stating whether or not the proposed works are feasible; whether the proposed diversion of the public waters of the State will prove beneficial to the public interest; whether there is sufficient unappropriated water in the source of supply; and whether or not a permit to divert and appropriate water through the proposed works has been approved by him; whether the capacity of the proposed works is adequate to reclaim the land described; whether or not the proposed cost of construction is reasonable; and whether or not the maps filed in his office comply with the requirements of said office and the regulations of the Department of the Interior; also whether or not the lands proposed to be irrigated are desert in character and such as may properly be set apart under the provisions of the aforesaid act of Congress and the rules and regulations of the Department of the Interior thereunder. Whenever the State Engineer shall be unable from an examination of the maps and field notes submitted for his examination, to determine whether or not the proposed irrigation works are feasible and adequate, whether or not the proposed cost of construction is reasonable, or whether or not the proposed diversion of the public water would be beneficial to the public interest, and whether or not the lands proposed to be irrigated are of such a character as to come under the provisions of the aforesaid act of Congress, it shall be his duty to make, or cause to be made

by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board.

Historical: Laws 1899, 282, Ch. 2, Sec. 9; re-enacting Laws 1895, 215, Ch. 2, Sec. 9. "Register" inserted for "secretary," to conform to Laws 1905, 131, Sec. 30.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 943.

Approval of Application by Board.

Sec. 1619. On receipt of the report of the State Engineer the Register shall place the request and proposal with the Engineer's report thereon before the board for its consideration. In case of approval the board shall instruct the Register to file in the local land office a request for the withdrawal of the land described in said proposal. No request on which the State Engineer has reported adversely, either as to the water supply, the feasibility of the construction, the cost or capacity of the works, or as to the character of the lands sought to be irrigated, shall be approved by the board.

Historical: Laws 1899, 282, Ch. 2, Sec. 10; re-enacting Laws 1895, 215, Ch. 2, Sec. 10. "Register" inserted for "secretary," to conform to Laws 1905, 131, Sec. 30.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 944.

Adverse Report by Engineer.

Sec. 1620. In case the State Engineer shall report adversely upon the proposed irrigation works, or where requests and proposals are not approved by the board, the said board shall notify the parties making such proposal of such action and the reasons therefor. The parties so notified shall have sixty days in which to submit a satisfactory proposal; but the board may, at its discretion, extend the time to six months.

Historical: Laws 1899, 282, Ch. 2, Sec. 11; re-enacting Laws 1895, 215, Ch. 2, Sec. 11. "The said board" inserted before "shall notify," to complete the sense.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 945.

Contract With Proposed Contractor.

Sec. 1621. Upon the withdrawal of the land by the Department of the Interior, it shall be the duty of the board to enter into a contract with the parties submitting the proposal, which contract shall contain complete specifications of the location, dimensions, character and estimated cost of the proposed ditch, canal or other irrigation works; the price and terms per acre at which such works and perpetual water rights shall be sold to settlers; and the price and terms upon which the State is to dispose of the lands to settlers. This contract shall not be entered into on the part of the State until the withdrawal of the lands by the Department of the Interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in a penal sum equal to five per cent of the estimated cost of the works, and shall be conditioned for the faithful performance of the provisions of the contract with the State.

Historical: Laws 1899, 282, Ch. 2, Sec. 12; re-enacting Laws 1895, 215, Ch. 2, Sec. 12.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 946.

Same: Limitations on Terms.

Sec. 1622. No contract shall be made by the board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within six months from date of contract; that at least one-tenth of the construction work shall be completed within two years from the date of said contract; that construction shall be prosecuted diligently and continuously to completion, and that a cessation of work under the contract with the State for a period of six months after the second year, without the sanction of the board, will forfeit to the State, all rights under said contract.

Historical: Laws 1899, 282, Ch. 2, Sec. 13; re-enacting Laws 1895, 215, Ch. 2, Sec. 13.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 947.

Forfeiture of Contract for Contractor's Default.

Sec. 1623. Upon the failure of any parties, having contracts with the State for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the State, to the satisfaction of the State Engineer, it shall be the duty of the Register to give such parties written notice of such failure; and, if after a period of sixty days from the sending of such notice, they shall have failed to proceed with the work or to conform to the specifications of their contract with the State, the bond and contract of such parties and all works constructed thereunder shall be at once and thereby forfeited to the State; and it shall be the duty of the board at once so to declare and to give notice once each week, for a period of four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the State capital in like manner and for a like period, of the forfeiture of said contract, and that upon a fixed day proposals will be received at the office of the board in the Capitol at Boise City for the purchase of the incompleated works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received by the board from the sale of partially completed works under the provisions of this section shall first be applied to the expenses incurred by the State in their forfeiture and disposal, and to satisfying the bond; and the surplus, if any exists, shall be paid to the original contractors with the State.

Historical: Laws 1899, 282, Ch. 2, Sec. 14; re-enacting Laws 1895, 215, Ch. 2, Sec. 14. "Register" inserted for "secretary," to conform to Laws 1905, 131, Sec. 30.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 948.

State Not to Be Responsible for Work.

Sec. 1624. Nothing in this chapter shall be construed as authorizing the board to obligate the State to pay for any work constructed under any contract, or to hold the State in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the State.

Historical: Laws 1899, 282, Ch. 2, Sec. 15; re-enacting Laws 1895, 215, Ch. 2, Sec. 15.

Comparative Legislation: See Rev. Stat. Wyoming, 1899, Sec. 949.

Publication of Notice of Opening.

Sec. 1625. Immediately upon the withdrawal of any land for the State by the Department of the Interior, and the inauguration of work by the contractor, it shall be the duty of the board, by publication once each week in some newspaper of the county in which said lands are situated, and one newspaper at the State Capital, for a period of four weeks, to give notice that said land, or any part thereof as the board in its discretion may deem is for the best interest of the State, is open for settlement, the price for which said land will be sold to settlers by the State and the contract price at which settlers can purchase water rights or shares in such works.

Historical: Laws 1899, 282, Ch. 2, Sec. 16; amended Laws 1901, 191, Sec. 6.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 950.

Application to Enter Land.

Sec. 1626. Any citizen of the United States, or any person having declared his intention to become a citizen of the United States (excepting married women) over the age of twenty-one years, may make application, under oath, to the board, to enter any of said land in an amount not to exceed one hundred and sixty acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the Act of Congress and the laws of this State relating thereto, and that the applicant has never received the benefit of the provisions of this chapter to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association who has been authorized by the board to furnish water for the reclamation of said lands; and, if said applicant has at any previous time entered lands under the provisions of this chapter he shall so state in his application, together with description, date of entry and location of said land. The board shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as a partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be refunded to the applicant. The board shall dispose of all lands accepted by the State under the provisions of this chapter at a uniform price of fifty cents per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler.

Historical: Laws 1899, 282, Ch. 2, Sec. 17; re-enacting Laws 1895, 215, Ch. 2, Sec. 17.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 951.

Disposition of Proceeds of Sale.

Sec. 1627. As provided in the act of Congress all moneys received by the board from the sale of lands selected under the provisions of this chapter shall be deposited with the State Treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the board and of the State Engineer's office incurred in carrying out the provisions of this chapter.

Such expenses shall be paid by the State Auditor in the manner provided by law, upon vouchers duly approved by the State Board of Examiners, for the work performed under the direction of the State Board of Land Commissioners, and by the State Engineer for all work performed by the State Engineer's office; and any balance remaining over and above the expense necessary to carry out the provisions of this chapter, shall constitute a trust fund in the hands of the State Treasurer to be used only for the reclamation of other arid lands.

Historical: Laws 1899, 282, Ch. 2, Sec. 18; re-enacting Laws 1895, 215, Ch. 2, Sec. 17. Inserting "under the direction of the State Board of Land Commissioners" for "its" before "direction." The word "its" was evidently a mistake as the work is not

performed under the direction of the Board of Examiners, but of the Land Board.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 952.

Proof of Reclamation by Settlers.

Sec. 1628. Within one year after any person, company or persons, association or incorporated company, authorized to construct irrigation works under the provisions of this chapter, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the State, the said settler shall cultivate and reclaim not less than one-sixteenth part of the land filed upon, and within two years after the said notice the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within three years from the date of said notice the settler shall appear before the register of the State Board of Land Commissioners, a judge or clerk of any court of record within the State, or commissioners to be designated by the board, within the State, and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he is the owner of shares in the works which entitled him to a water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he has been an actual settler thereon and has cultivated and irrigated not less than one-eighth part of said tract; and such further proof, if any, as may be required by the regulations of the Department of the Interior and the Board. The officer taking this proof shall be entitled to receive a fee of two dollars, which fee shall be paid by the settler and shall be in addition to the price paid to the State for the land: *Provided*, That when the Register of the board takes final proof, all fees received by him shall be turned into the State Treasury. The commissioners appointed by the board are hereby authorized to administer oaths. All proofs so received shall be submitted by the Register to the Board, and shall be accompanied by the final payment for said land, and upon approval of the same by the board the settler shall be entitled to his patent. If

the land shall not be embraced in any patent theretofore issued to the State by the United States, the proofs shall be forwarded to the Secretary of the Interior, with the request that a patent to said lands be issued to the State.

When the works designed for the irrigation of lands under the provisions of this chapter shall be so far completed as to actually furnish an ample supply of water in a substantial ditch or canal to reclaim any particular tract or tracts of such lands, the State of Idaho shall, through the State Board of Land Commissioners, make proof of such fact, and shall apply for a patent to such lands in the manner provided in the regulations of the Department of the Interior.

Historical: Laws 1895, 215, Ch. 2, Sec. 19; re-enacting Laws 1899, 282, Ch. 2, Sec. 19; amended Laws 1901, 191, Sec. 7; amended Laws 1905, 95, Sec. 1. The words "Secretary or" appearing before "Register" in the proviso are omitted, as the office of

secretary is supplanted by that of Register under the 1905 law. See Laws 1905, 131, Sec. 30.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 953.

Water Contracts a Lien on Land: Foreclosures.

Sec. 1629. Upon the issuance of a patent to any lands by the United States to the State, notice shall be forwarded to the settler upon such land. It shall be the duty of the board, under the signature of the president attested by its Register, to issue a patent to said lands from the State to the settler.

The water rights to all lands acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the State. Any person, company or association, furnishing water for any tract of land shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the recorder of the county where said land is situate.

Upon default of any of the deferred payments secured by any lien under the provisions of this chapter, the person, company or persons, association or incorporated company, holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situate, for six consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the aforesaid contract. And the sheriff of said county shall in all such cases give all notices of sale, and shall sell all such lands and water rights, and shall make and execute a certificate of sale to the purchaser thereof. And at such sale no person, company or persons, association or incorporated company, owning and holding any lien, shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment for said water

right and land, and the costs incurred in making the sale of said land and water right.

At any time within nine months after the foreclosure sale by the sheriff of the land and water rights aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person, company of persons, association or incorporated company, purchasing at such sale, to redeem such land and water rights and the purchaser shall assign the certificate of sale of such land and water rights to such original owner, upon the payment by him within such nine months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon.

Where the lien holder becomes the purchaser at such foreclosure sale, if such land and water rights are not redeemed by the original owner within nine months, then at any time within three months after the expiration of such nine months, any person desiring to settle upon and use such land and water rights, may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him, within such three months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon.

Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the recorder of the county where such land is situated, a certified copy of such certificate of sale; and, in case the original owner shall redeem the land and water rights sold as aforesaid, he shall file for record in the office of such recorder, the certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person so redeeming the same. If the land and water rights shall not be redeemed by any person within the times and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of the certificate of sale by the original purchaser, to issue a deed to such purchaser. Where such land and water rights are not purchased by the lien holder at such foreclosure sale, it shall be the duty of the sheriff to first pay the lien holder out of the proceeds of such sale, the amount of the lien, together with all interest, costs and fixed charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by the law in civil cases.

Historical: Laws 1899, 282, Ch. 2, Sec. 20; re-enacting Laws 1895, 215, Ch. 2, Sec. 20. "Recorder" inserted throughout for "county clerk" to conform to local nomenclature.

Comparative Legislation: See Rev. St. Wyoming, 1899, Secs. 954 to 962 inclusive.

Rights of Way for Canals.

Sec. 1630. The maps in the office of the board of the lands selected under the provisions of this chapter, shall show the location of the canals or other irrigation works approved in the contract with the

board, and all lands filed upon shall be subject to the rights of way of such canals or irrigation works. Each right of way shall embrace the entire width of the canal and such additional width as may be required for its proper operation and maintenance, the width of right of way to be specified in the contracts provided for in this chapter.

Historical: Laws 1899, 282, Ch. 2, Sec. 21; re-enacting Laws 1895, 215, Ch. 2, Sec. 21.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 963.

Board to Prescribe Rules: Reports of Contractors.

Sec. 1631. The board shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the entry of and payment for the land by settlers, and for the forfeiting of entry by settlers upon failure to comply with the provisions of this chapter. There shall be kept in the office of the board, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of lands by settlers. The board shall require from each person, company of persons, association or incorporated company engaged in the construction of irrigation works, under the provisions of this chapter, an annual report, to be submitted to the board on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the board sees fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by a person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves.

Historical: Laws 1899, 282, Ch. 2, Sec. 22; re-enacting Laws 1895, 215, Ch. 2, Sec. 22.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 964.

Fees of Board.

Sec. 1632. The board shall prescribe the duties of all its employees and shall collect the following fees:

For filing each application, one dollar; for making certified copies of papers or records the same fee as provided for to be charged by the Secretary of State for like services. The money collected for fees shall be paid to the Treasurer of the State and by him credited to the fund created by virtue of this chapter.

Historical: Laws 1899, 282, Ch. 2, Sec. 23; re-enacting Laws 1895, 215, Ch. 2, Sec. 23.

Cross Reference: Fees of Secretary of State: Sec. 99.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 965.

Board to Issue Report.

Sec. 1633. The board shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivisions of land intended to be reclaimed, the estimated cost of said irrigation works, and the price of water rights

from such irrigation works, and the terms of payment for both water rights and land. Not less than five thousand copies of such report shall be printed for gratuitous distribution.

Historical: Laws 1899, 282, Ch. 2, Sec. 24; re-enacting Laws 1895, 215, Ch. 2, Sec. 24.

Cross Reference: Reports of officers and boards: Sec. 279.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 966.

Suits by Board.

Sec. 1634. All suits or actions brought by the board, under the provisions of this chapter, shall be instituted by the board in the name of the people of the State of Idaho.

Historical: Laws 1899, 282, Ch. 2, Sec. 25; re-enacting Laws 1895, 215, Ch. 2, Sec. 25.

Comparative Legislation: See Rev. St. Wyoming, 1899, Sec. 967.

CHAPTER 6.

RESERVOIRS AND RIGHTS OF WAY.

Section

1635. Rights of way for ditches and reservoirs.

1636. Reservoir lands may be withheld from sale.

Section

1637. Rights of way for railroads, telegraphs, etc.

1638. Rights of way to United States.

Rights of Way for Ditches and Reservoirs.

Sec. 1635. Any person or persons desiring to construct over or upon any of the lands owned or controlled by the State of Idaho, any ditch, canal, reservoir or other works for carrying or distributing public waters for any beneficial use, may make application to the State Board of Land Commissioners for said right of way, and shall at the same time file, in duplicate, both in the office of the State Board of Land Commissioners and in the office of the State Engineer, maps showing the location of such lands by accurate survey of such ditch, canal, reservoir or other irrigation works. Such map shall be drawn on tracing linen on a scale of not less than one thousand feet to the inch, and shall be accompanied by the field notes of survey of such irrigation works.

In the case of a reservoir the maps shall show by contour lines, at intervals not greater than ten feet, the topographic features of such reservoir site, and shall state the capacity of such reservoir in acre feet; and when the dam or embankment of such reservoir shall be more than ten feet in height, plans showing the construction of such dam or embankment shall be filed in duplicate in the office of the State Board of Land Commissioners and in the office of the State Engineer. All such maps, plans and field notes shall be certified by the engineer under whose direction such surveys or plans were made. If such map or description is defective or incomplete, the State Board of Land Commissioners may order the same to be corrected; and the State Board of Land Commissioners may grant land for such right of way upon the payment of such compensation therefor as may be deemed reasonable, not less than ten dollars per acre, and upon such terms and conditions as they may deem best: *Provided*, That the works for which the right of way is herein provided, must be com-

pleted within the time mentioned in the application for the same (which shall accompany such map), which shall in no case be more than five years from the time of filing such application and maps, and the construction of the works herein mentioned must be commenced within one year after such application and maps are filed, and must be prosecuted to completion diligently and uninterruptedly on a scale reasonably commensurate with the magnitude of the proposed works, in order to obtain the right of way under this section.

It shall be the duty of the Register of the State Board of Land Commissioners, upon the granting of the said rights of way, to note the same upon the plats of the said lands on file in his office.

Historical: Laws 1901, 191, Sec. 8;
amended Laws 1907, 527, Sec. 1.

for ditches—additional provision: Sec.
3302.

Cross Reference: Rights of way

Reservoir Lands May Be Withheld From Sale.

Sec. 1636. When it shall appear upon an investigation by the State Board of Land Commissioners that certain lands belonging to the State are more valuable for reservoir purposes than for any other purpose, the said board may withhold such lands from sale, and such lands shall be reserved by the State for storage purposes as a means of reclaiming other State lands in the vicinity. If, upon investigation, it is ascertained that certain State lands are more valuable for reservoir purposes than for any other purpose, and can be used as a means of reclaiming other lands in that vicinity, the said board may withhold the same from sale until such time as it is advisable to sell the same, and may sell such lands as a whole for the purpose of a reservoir site, and upon such terms and conditions as they may deem advisable, but no such lands shall be sold for less than ten dollars per acre; *Provided*, That if the lands so sold for reservoir purposes are not used for the purpose of said reservoir, or if the works in connection with which said reservoir is to be used are not constructed within five years from the granting or sale of the said lands, or such further time as the State Land Board shall grant, the rights granted shall revert to the State.

Historical: Laws 1901, 191, Sec. 9;
amended Laws 1907, 527, Sec. 2.

Rights of Way for Railroads, Telegraphs, Etc.

Sec. 1637. The State Board of Land Commissioners is hereby empowered to grant, over and upon any land owned or controlled by the State of Idaho, rights of way for railroad, telegraph, telephone and electric lines, also rights of way for highway purposes, and rights of way for any other public or private purpose or beneficial use. Application for such right of way must be accompanied by a map, in duplicate, showing the course of such right of way over each smallest legal subdivision of land, and the amount of land required for said right of way. The said right of way may be granted by the State Board of Land Commissioners upon such terms and upon such compensation being paid therefor as the said board may determine: *Provided*, That no land shall be sold under the provisions of this section for less than ten dollars per acre. Upon the said right of way being granted, it shall be the duty of the Register of the State Land Board

to enter the same upon the plats of State lands on file in his office: *Provided, further,* That if the lands so granted are not used for the purpose specified in the application for right of way, within five years from the granting of such right of way, then in such event the said lands so granted shall revert to the State; or if the tracks or works upon such lands for which such right of way has been granted are not completed within five years after such right of way has been granted, the State Land Board shall have the right to declare such rights of way forfeited.

Historical: Laws 1907, 310, Sec. 1.

Rights of Way to United States.

Sec. 1638. There is hereby granted over all the lands now or hereafter belonging to the State a right of way for ditches, tunnels and telephone and transmission lines, constructed by authority of the United States. All conveyances of State lands hereafter made shall contain a reservation of such right of way.

Historical: Laws 1905, 373, Sec. 1.

CHAPTER 7.

MISCELLANEOUS PROVISIONS.

Section	Section
1639. Withdrawal of lands for park purposes.	1641. Conveyances in satisfaction of school fund mortgages.
1640. Payment of taxes on state lands.	1642. Foreclosure of school fund mortgages.

Withdrawal of Lands for Park Purposes.

Sec. 1639. Wherever any lands are owned by the State of Idaho, bordering on or in the vicinity of any lake, waterfall, spring, or other natural curiosity, the State Board of Land Commissioners may withdraw said premises from sale. If in the opinion of the said Land Board it is desirable, the said lands may be platted into lots and blocks, parks, streets and public places, and said lots and blocks may be appraised and an annual rental fixed thereon. No lease of such premises shall be made for a longer period than seven years, and every lease shall specify that no saloon or disorderly house shall be kept on the premises; that the premises shall be kept in good condition, and that no waste shall be committed thereon. The said Land Board may require a bond against waste, and may prescribe additional rules and regulations for leasing of said premises for the use thereof and for construction of buildings or other improvements thereon, and the removal thereof.

Historical: Laws 1907, 311, Sec. 1.

Payment of Taxes on State Lands.

Sec. 1640. The State Board of Land Commissioners is hereby authorized to pay any and all taxes and assessments that are assessed against, and are liens upon, lands upon which the State has loaned money secured by mortgage, or upon which the State has acquired title through foreclosure proceedings, and upon which there are delinquent taxes, assessed previous to acquiring such title. Such amount

of taxes and assessments shall be ascertained by the State Board of Land Commissioners, and a claim presented to the State Board of Examiners, and after the allowance of such claim the Auditor shall draw his warrant for the amount of such claim.

Historical: Laws 1905, 377, Sec. 1.

Conveyances in Satisfaction of School Fund Mortgages.

Sec. 1641. In all cases where school moneys have been advanced, furnished or loaned to companies, corporations or individuals, by the State Board of Land Commissioners, and a mortgage for the payment of the same has been taken on improved farm lands, as provided by the Constitution, and the said money has become due, and remains unpaid, the State Board of Land Commissioners are hereby empowered to, and they may in their discretion, receive and accept from the said mortgagor a warranty deed to the property mortgaged in full satisfaction of the debt due the State upon said mortgage, and surrender the note to the mortgagor and receipt him in full for the debt due thereon.

Historical: Laws 1899, 439, Sec. 1.

Foreclosure of School Fund Mortgages.

Sec. 1642. In any case where any mortgage is held by the State Board of Land Commissioners for any school money due, it shall be the duty of the Attorney General, when directed by the Board of Land Commissioners, to file foreclosure proceedings in the proper court and prosecute the same to judgment, and to look after and care for the State's interests in every stage of the proceedings until finally determined.

Historical: Laws 1899, 439, Sec. 4.

TITLE 10

REVENUE

Chapter

1. Property taxes.
2. License taxes.
3. Poll taxes.

Chapter

4. Taxation of profits of mines.
5. Transfer tax on successions, legacies and devises.

Note: Levy and collection of municipal taxes: Secs. 2265, 2268; of road taxes: Secs. 894-906; of irrigation district taxes: Secs. 2407-2415. Levy of special taxes by school districts: Sec. 622; by independent districts: Sec. 661. Crimes against revenue: Secs. 6975-6985.

CHAPTER 1.

PROPERTY TAXES.

Article

1. Property subject to taxation.
2. Definitions.
3. Levy and lien of taxes.
4. Assessment of property.
5. County board of equalization.
6. State board of equalization.
7. Assessment book and assessment rolls.
8. Payment of taxes before delinquency.
9. Sales of real property for delinquent taxes.

Article

10. Redemption, and assignment of certificates.
11. Seizure and sale of personalty.
12. Errors, mistakes and informalities.
13. Apportionment of taxes.
14. Settlements with the State.
15. Assessment and collection of city and school district taxes.
16. General duties and liabilities of officers in relation to revenue.

Note: This chapter is the 1901 Revenue Act, which was a compilation of the existing law based on Rev. St. 1887 as amended by Laws 1895 and 1899. The article relating to the State Board of Equalization first appeared in its present form in 1893, and the provisions concerning the assessment of livestock in 1897. The legislation is traced in the historical notes.

ARTICLE 1.

PROPERTY SUBJECT TO TAXATION.

Section

1643. Property subject to taxation.
1644. Property exempt from taxation.

Section

1645. Transient teams not taxable.

Property Subject to Taxation.

Sec. 1643. All property in this State, not exempt under the laws of the United States, including interests in State lands to the extent of the amount paid thereon and of the value of all improvements, is subject to taxation as in this chapter provided; but nothing in this chapter shall be construed to require or permit double taxation.

Historical: Laws 1901, 233, Sec. 1.
See Rev. St. 1887, Sec. 1400.

California Legislation: See Pol.

Code 1872, Sec. 3607; as amended:
Deering's Code, ib.; further amended:
Kerr's Code, ib.

Cross Reference: Duplicate taxation prohibited. Const. Art. 7, Sec. 5.

Taxable Property: Where goods were ordered by citizens of Idaho from wholesale merchants in San Francisco, and the goods were packed, boxed and shipped from San Francisco and consigned to the shippers at Ilo, Idaho, and received by them at their destination and removed from the depot or warehouse, and the boxes or cases were opened by them, and the separate packages or parcels were removed from the boxes or cases in which they were shipped, the

goods have ceased to be the subject of interstate transportation, and are taxable under the revenue laws of this State. *Parks Bros. v. Nez Perce Co.* (1907) 13 Ida. ...; 89 Pac. 949.

Double Taxation: The assessment of a taxpayer's property in one county, when it has already been assessed in another county, resulting from his refusal to furnish the assessor with a statement of his property, does not constitute double taxation within the meaning of this section. *Erwin v. Hubbard* (1894) 4 Ida. 170; 37 Pac. 274.

Property Exempt From Taxation.

Sec. 1644. The following property is exempt from taxation:

1. All property used exclusively for school purposes and such as may belong to the United States, this State, or to any county or municipal corporation or school district within this State.

2. Churches, chapels and other buildings with the lots or ground appurtenant thereto and used therewith, belonging to any church organization or society and used for religious worship, from which no rent is derived, with their furniture and equipments, and hospitals used for benevolent purposes, with the lots of ground appurtenant thereto and used therewith from which no rent is derived, with their furniture and equipments; also public cemeteries.

3. Buildings or parts of buildings owned and used by the Orders of Masons, and Odd Fellows, or by any other benevolent or charitable society, exclusively for the purpose of its order, and their furniture and equipments.

4. The property of resident widows, orphan children and honorably discharged soldiers and sailors who served in the Army and Navy of the United States during the war of the Rebellion, not to exceed the amount of one thousand dollars to any one family, when their total assessment is less than five thousand dollars.

5. Growing crops.

6. Capital stock of corporations when the property has been assessed.

7. Public and private libraries.

8. Tools of a mechanic, farmer, miner, prospector, and the household goods of the head of a family or householder, or the farming implements and machinery of farmers, not exceeding in value four hundred dollars.

9. Possessory rights to public lands.

10. All dues and credits secured by mortgage, trust deed or other liens.

11. Mining claims not patented; but machinery, property and improvements upon or appurtenant to mining claims shall not be exempt.

12. All irrigation canals and ditches and water rights appurtenant thereto, when the owner or owners of said irrigating canals and ditches use the water thereof exclusively upon land or lands owned by him, her or them: *Provided*, In case any water be sold or rented from any such canal or ditch, then, in that event, such canal or ditch shall be taxed to the extent of such sale or rental.

Historical: Laws 1901, 233, Sec. 2; amended Laws 1907, 176, Sec. 1. See Rev. St. 1887, Sec. 1401; amended Laws 1897, 77, Sec. 1; re-enacted Laws 1899, 220, Sec. 2.

California Legislation: See Pol. Code 1872, Sec. 3607; amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cross Reference: Legislature may provide exemptions: Const. Art. 7, Sec. 5. Property of the United States, the State, counties, municipal corporations, and public libraries exempt from taxation: Const. Art. 7, Sec. 4. State lands are exempt from taxa-

tion while the title remains in the State but the value of the purchaser's interest may be taxed: Sec. 1586.

Taxation of Mining Claims: As long as the title to mines and mining claims remains in the United States government, such mines and mining claims are not subject to local taxation, but when they cease to be the property of the United States, when the fee has passed from the United States to the citizen, such exemption no longer exists and they are subject to taxation. (Sullivan J., dissents.) *Salisbury v. Lane* (1900) 7 Ida. 370; 63 Pac. 383.

Transient Teams Not Taxable.

Sec. 1645. Any team, wagon, pack train, or any animal or property belonging thereto or connected therewith, owned without the State and temporarily within the State for the purpose of carrying or delivering goods or other freight, is not subject to taxation.

Historical: Laws 1901, 233, Sec. 39. Rev. St. 1887, Sec. 1437.

ARTICLE 2. DEFINITIONS.

Section

1646. Definitions of terms.

Definitions of Terms.

Sec. 1646. Whenever the terms mentioned in this section are employed in this chapter they are employed in the sense hereafter affixed to them:

1. The term "property" includes moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership.

2. The term "real estate" includes: (1) The possession of, claim to, ownership of or right to the possession of land: (2) all mines, minerals and quarries in and under the lands, and all rights and privileges appertaining thereto.

3. The term "improvements" includes: (1) All buildings, structures, fixtures, fences and improvements erected upon or affixed to the land; (2) all fruit, nut bearing or ornamental trees, or vines not of natural growth.

4. The term "personal property" includes everything which is the subject of ownership not included within the meaning of the term "real estate."

5. The term "value" and "full cash value" means the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

6. The term "credit" means those solvent debts owing to the person, firm or corporation or association assessed. The term "debts" means those liabilities owing by the person, firm, corporation or association, assessed to bona fide residents of this State, or firms, associations or corporations doing business therein.

Historical: Laws 1901, 233, Sec. 3. Rev. St. 1887, Sec. 1405.

California Legislation: Similar in part: Pol. Code 1872, Sec. 3617; sim-

ilar as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cross Reference: Property to be defined and classified by law: Const. Art. 7, Sec. 3.

Cited: Humbird Lumber Co. v. Thompson (1905) 11 Ida. 614; 83 Pac. 941.

Construction: Under the revenue

act of 1869, it was held that a possessory interest in a claim to 'public land is real estate and assessable as such, but the buildings and improvements on such a claim are personal property and cannot be assessed as real estate. *People v. Owyhee Mining Co.* (1871) 1 Ida. 409.

ARTICLE 3.

LEVY AND LIEN OF TAXES.

Section

1647. State ad valorem tax: County tax.

1648. Levy for State tax: Delinquency warrant tax.

Section

1649. Tax has effect of judgment.

1650. Personal taxes a lien on realty.

1651. Real property taxes a lien.

State Ad Valorem Tax: County Tax.

Sec. 1647. Whenever there is levied for State purposes, as provided by law, an annual ad valorem tax, the same shall be paid by the several counties of this State in the proportion which their assessed valuation, as shown by their respective assessment and subsequent assessment rolls, bears for the year next preceding that in which said tax is to be paid, to the total assessed valuation of the State for the preceding year; and upon the same property, the board of county commissioners of each county is also hereby authorized and empowered to levy annually a tax for county expenditure, inclusive of the amount required to be paid as State taxes, the sum of one hundred and fifty cents on each one hundred dollars, and, if they deem necessary, a tax of twenty-five cents on each one hundred dollars, to be expended for the repair and construction of bridges within the county, as the board of county commissioners may order and direct, and such additional and special taxes as are in this chapter or other laws of this State authorized: *Provided, however,* That whenever the board of county commissioners levy any tax, such levy must be entered on the records of their proceedings; their clerk must deliver a certified copy thereof to the assessor, tax collector, auditor and treasurer, each of whom must file said copy in his office.

Historical: Laws 1901, 233, Sec. 4. See Rev. St. 1887, Sec. 1410; amended Laws 1895, 101, Sec. 2; amended Laws 1897, 33, Sec. 1; re-enacted Laws 1899, 254, Sec. 2.

Cross Reference: Levy of school tax: Sec. 603. Livestock sanitary tax: Sec. 1205. Special tax levy in good road district: Sec. 1056. Addition to tax against land of amount charged for services of water master: Sec. 3281.

Liability of County: A county is not liable to the State for uncollected taxes levied upon lands, which, in default of payment, are sold at a delinquent sale and bid in by the county, until such lands are redeemed or otherwise disposed of by the county. *State v. Ada Co.* (1900) 7 Ida. 261; 62 Pac. 457.

Levy for State Tax: Delinquency Warrant Tax.

Sec. 1648. The board of county commissioners of each county must, on the second Monday of September, annually, ascertain the rate necessary to be levied on each one hundred dollars of taxable property in said county, as shown by the last assessment, in order to secure the amount of State ad valorem taxes apportioned to such county, each year, by the State Board of Equalization as certified

by the State Auditor, and must levy the same, together with such percentage of increase as in the judgment of the board of county commissioners may be necessary in order to provide for taxes unpaid prior to sale for delinquency thereof; and thereupon the county shall become liable to the State for the full amount of such State ad valorem taxes apportioned to such county, and the same shall be payable in full without deductions, on or before the day designated by the assessor for the sale of property for delinquent taxes for such year in such county; and at the same time said commissioners, unless provision shall have been made for funding, refunding or exchange of the outstanding county warrant indebtedness as provided by law, whenever any county shall have warrants outstanding and unpaid for the payment of which there are no funds in the county treasury, in addition to the other taxes provided by law, if such warrants amount to a sum equal to five per cent. or more, of the value of the taxable property of such county, as shown by the last preceding assessment, must levy a special tax of ten mills on the dollar, as shown by such preceding assessment; if such warrants amount to a sum equal to four per cent and less than five per cent of such taxable property, they must levy a special tax of not less than eighty cents nor more than one hundred cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; if such warrants amount to a sum equal to three per cent and less than four per cent of such taxable property, they must levy a special tax of not less than sixty cents nor more than ninety cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; if such warrants amount to a sum equal to two per cent and less than three per cent of such taxable property, they must levy a special tax of not less than forty cents nor more than sixty cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; if such warrants amount to one per cent and less than two per cent of such taxable property, they must levy a special tax of not less than twenty cents nor more than forty cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; and if such warrants amount to less than one per cent of such taxable property, they must levy such special tax on the dollar, as shown by such preceding assessment, as shall be sufficient to pay such warrants.

All moneys arising from such special tax shall be placed in a special fund for the redemption of such warrants, which shall be paid exclusively out of said fund, which shall be known as the warrant redemption fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses and applicable thereto, shall be transferred to said warrant redemption fund.

Historical: Laws 1901, 233, Sec. 5.
See Rev. St. 1887, Sec. 1411; amended
Laws 1895, 101, Sec. 3; re-enacted

Laws 1899, 254, Sec. 3; amended
Laws 1899, 455, Sec. 1.

Tax Has Effect of Judgment.

Sec. 1649. Every tax, including taxes of cities, towns, villages and independent school districts, authorized by law to collect revenue, as provided by this chapter, has the effect of a judgment against the person, and every lien created by this chapter has the force and

effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

Historical: Laws 1901, 233, Sec. 181. See Rev. St. 1887, Sec. 1412.

California Legislation: Similar:

Pol. Code 1872, Sec. 3716; Deering's Code, ib.; Kerr's Code, ib.

Personal Taxes a Lien on Realty.

Sec. 1650. Every tax due upon personal property is a lien upon real property of the owner thereof from and after the second Monday in January in each year.

Historical: Laws 1901, 233, Sec. 182, See Rev. St. 1887, Sec. 1413.

California Legislation: See Pol.

Code 1872, Sec. 3717; as amended: Deering's Code, ib.; Kerr's Code, ib.

Real Property Taxes a Lien.

Sec. 1651. Every tax of State, counties, cities, towns, villages and independent school districts, authorized by law to collect revenues as provided in this chapter, when due upon real estate, is a lien against property assessed, and every tax due upon improvements on real estate assessed to others than the owner of the real estate, is a lien upon the lands and improvements; which several liens attach as of the second Monday in January in each year.

Historical: Laws 1901, 233, Sec. 183. See Rev. St. 1887, Sec. 1414.

California Legislation: See Pol.

Code 1872, Sec. 3718; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 4.

ASSESSMENT OF PROPERTY.

Section

- 1652. Property assessed at cash value.
- 1653. Place of assessment: Persons to whom assessed: Mistakes in names.
- 1654. Assessment of real estate.
- 1655. Same: Second description unnecessary.
- 1656. Same: Ditches and toll roads.
- 1657. Assessment of livestock.
- 1658. Same: Assessment in other counties.
- 1659. Same: Notification to assessor: Statement by taxpayer.
- 1660. Same: Rebates for subsequent payments.
- 1661. Same: Migratory stock fund.
- 1662. Same: Amount of tax.
- 1663. Same: Distraint of stock.
- 1664. Same: Excess: Rebate.
- 1665. Same: Collection of deficiency.
- 1666. Lien of tax: Enforcement by action.
- 1667. Non-compliance with article by owner.
- 1668. Stock in transit.
- 1669. Assessment of property in transit.
- 1670. Assessment to agents, etc.

Section

- 1671. Owner of corporate stock not to be assessed.
- 1672. Assessment of bank stock.
- 1673. Assessment of corporate and firm property.
- 1674. Property of decedents.
- 1675. Ferries and toll bridges.
- 1676. Assessment of vessels.
- 1677. Same.
- 1678. Same: Boats and small craft.
- 1679. Property in litigation.
- 1680. Assessment of concealed property.
- 1681. Assessment of omitted property.
- 1682. Statement by taxpayer.
- 1683. Credits: Deduction of debts.
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- 1685. Same: Form.
- 1686. Assessor may file statement.
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- 1688. Refusal to furnish statement: Duty of assessor.
- 1689. Absent or unknown owners.
- 1690. Same: To whom assessed.
- 1691. Property in other county: Transmission of statement.

Property Assessed at Cash Value.

Sec. 1652. All taxable property must be assessed at its full cash value; lands and improvements thereon must be assessed separately.

Historical: Laws 1901, 233, Sec. 10. See Rev. St. 1887, Sec. 1425; amended Laws 1893, 131, Sec. 1; re-enacted Laws 1899, 215, Sec. 1.

California Legislation: Similar: Pol. Code 1872, Sec. 3627; similar in part as amended: Deering's Code, ib.; Kerr's Code, ib.

Full Cash Value: A complaint to enjoin a tax collector from selling property to satisfy a tax levy on the

ground that the assessment is excessive, must allege the "full cash value" of the property as required by this section, and it is not sufficient to state the "fair value" or "true value" of the property, or to allege that other property of similar character in the same vicinity has been assessed at a less valuation. *Humbird Lumber Co. v. Thompson* (1905) 11 Ida. 614; 83 Pac. 941.

Place of Assessment: Persons to Whom Assessed: Mistakes in Names.

Sec. 1653. All taxable property shall be assessed in the county, city or district in which it is situated on the second Monday in January, or, if not within the State on that day, on the day of assessment; the assessor must, between the second Monday in January and the first day of July in each year, ascertain the names of all taxable inhabitants and all property in his county subject to taxation, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at 12 o'clock noon of the second Monday in January next preceding, or on the day of assessment as aforesaid; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this State.

Historical: Laws 1901, 233, Sec. 11. See Rev. St. 1887, Sec. 1428; amended Laws 1895, 101, Sec. 5; amended Laws 1897, 30, Sec. 1; re-enacted Laws 1899, 254, Sec. 5.

California Legislation: See Pol. Code 1872, Sec. 3628; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Assessment of Real Estate.

Sec. 1654. Real estate, and improvements thereon, together with all furniture, fixtures or other personal property belonging to any telegraph, telephone or railroad company, except such as is enumerated as being exclusively subject to assessment by the State Board of Equalization, shall be assessed by the assessor of the county for the State, county, city, town, village and independent school district, authorized by law to collect revenue as provided herein, in which such property is situated.

Historical: Laws 1901, 233, Sec. 12.

Assessment of Contiguous Lots: Two contiguous town lots owned by the same individual, may be jointly assessed and one valuation fixed for

the two unless the owner demands that the assessor assess the lots separately. *Co-operative etc. Assn. v. Green* (1897) 5 Ida. 660; 51 Pac. 770.

Same: Second Description Unnecessary.

Sec. 1655. Lands once described on the assessment book need not be described a second time in the same year, but any person claiming the same and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

Historical: Laws 1901, 233, Sec. 13.
Rev. St. 1887, Sec. 1456.

California Legislation: Same except

"in the same year", line 2, omitted:
Pol. Code 1872, Sec. 3657; Deering's
Code, ib.; Kerr's Code, ib.

Same: Ditches and Toll Roads.

Sec. 1656. Water ditches constructed for mining, manufacturing or irrigation purposes, and wagon or turnpike toll roads, must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such property as lies within his county, and extended on the assessment roll as improvements on real estate, indicating by initials the kind of improvement.

Historical: Laws 1901, 233, Sec. 14.
See Rev. St. 1887, Sec. 1460.

California Legislation: Similar:

Deering's Pol. Code, Sec. 3663; as
amended: Kerr's Code, ib.

Assessment of Livestock.

Sec. 1657. All livestock shall be assessed for taxation in the county in which it is found at the time fixed in this chapter to determine in what county property shall be assessed, or if not within the State on that day, shall be assessed in any county in which it may be found and first assessed, which county in which such livestock is assessed, or liable to assessment, shall be known as its home county; and at the time of such assessment the owner of such livestock, or his agent, shall make and deliver to the assessor a written statement under oath showing the number, description and different kinds of such livestock within the county, belonging to him or under his charge, with their marks and brands when practicable, and showing the full time during the current fiscal year that such livestock, and every part, portion any kind thereof, has been and will be within the county; and such livestock and the owner thereof, shall be liable to said county for the taxes thereon at the rate of levy for all State, county and other purposes, as other property is liable; and the owner thereof shall, unless sufficient real estate ample to secure the same is liable therefor, pay the assessor at the time of such assessment the whole amount of said taxes for the full year, and take his receipt therefor.

Historical: Laws 1901, 233, Sec. 15.
See Laws 1897, 22, Sec. 2; re-enacted
Laws 1899, 298, Sec. 2.

California Legislation: See Deering's Pol. Code, Sec. 3637, note; Kerr's Code, ib.

Same: Assessment in Other Counties.

Sec. 1658. All livestock that is kept, driven or pastured, or that is suffered to range or graze, in more than one county in this State, during the fiscal year, shall be subject to taxation in each of the counties in which it is kept, driven or pastured, or suffered to range or graze, or in which it does range or graze, in proportion to the time it is so kept, driven or pastured, or suffered to range or graze, or does range or graze, in such county in any fiscal year, as in this article provided.

Historical: Laws 1901, 233, Sec. 16.
See Laws 1897, 22, Sec. 1; re-enacted
Laws 1899, 298, Sec. 1.

California Legislation: See Deering's Pol. Code, Sec. 3637, and note; Kerr's Code, ib.

Same: Notification to Assessor: Statement by Taxpayer.

Sec. 1659. Whenever any such livestock is removed, or kept, driven or pastured, or suffered to range or graze, or does range or graze,

in any county other than its home county, the owner thereof or his agent shall, within ten days from the time any such stock enters such other county, notify the assessor of said county that he has entered or intends to enter said county, stating the date of said entry, the number, description and different kinds, with their marks and brands, when practicable, of such livestock in his possession or under his control or charge within said county, and he shall make and deliver, and it shall be the duty of such assessor to demand, a written statement under oath, similar in all respects as far as applicable to the statement required in the home county, showing the full length of time during the current fiscal year that such livestock and every part, portion and kind thereof, has been and will be within such county; that the taxes on such livestock for the current fiscal year have been fully paid or secured in the home county, naming the same, and shall produce for the inspection of the assessor or his deputy, upon demand, the receipt for said taxes, or in case the same have been secured, a certificate showing that the same has been done, and such livestock and the owner thereof shall be liable to said county for the part or portion of the taxes thereon, for the full length of time that such livestock has been and will be within said county, during said fiscal year, according to the rate of levy in said county for all State, county or other purposes, as other property in said county is liable; and such owner shall, before any livestock leaves said county, pay said taxes to the assessor of said county, or shall secure the payment of the same to the satisfaction of the assessor, and take his receipt or certificate therefor. If any such livestock shall not be removed from any county on or before the expiration of the time mentioned in any such written statement as the time during which they will remain in said county, and for which time taxes have been paid or secured in said county, or before the expiration of the time for which the taxes have been paid on the same, it shall be the duty of the owner or his agent to at once seek the assessor of the county and make an additional statement, under oath, similar to that hereinbefore provided for, and stating the additional time which such livestock has been and will remain in said county within the fiscal year, and he shall at once pay or secure the proportional tax for such additional time and take the assessor's receipt or certificate therefor.

Historical: Laws 1901, 233, Sec. 17.
See Laws 1897, 22, Secs. 3, 4; re-enacted Laws 1899, 298, Secs. 3, 4.

Same: Rebate for Subsequent Payments.

Sec. 1660. As soon as any such livestock is returned to its home county, or if not so returned there, before the expiration of the fiscal year, the owner thereof to whom they were first assessed, shall present the receipt or receipts received by him or any other person to whom he may have sold, showing what part or parts of the fiscal year for which taxes have been paid in other counties under and in pursuance of the provisions of this article, and said owner shall be entitled to, and shall receive, from the treasurer of said home county and out of the migratory stock fund, that part of the amount of the taxes paid on such livestock in said home county, proportionate as

the total periods of time for which taxes have been paid in other counties within the State, as shown by the receipts therefor presented, is to the whole year: *Provided*, That all the provisions of this article in regard to the payment of rebates shall apply where livestock owned by bona fide residents of this State has been ranged or grazed in an adjoining State for a portion of the year, and the owner of said livestock has been assessed and has paid taxes on said livestock in said adjoining State, upon the owner making satisfactory proof of the time during which his livestock has ranged during such year in said adjoining State.

Historical: Laws 1901, 233, Sec. 18; | Laws 1897, 22, Sec. 5; re-enacted Laws
amended Laws 1903, 374, Sec. 1. See | 1899, 298, Sec. 5.

Same: Migratory Stock Fund.

Sec. 1661. For the purpose of meeting and paying such rebates, as mentioned in the preceding section, the assessor of each county in the State is hereby directed, at the time of his regular monthly settlement with the treasurer, to separately deposit with him all moneys collected as taxes on livestock, except when such money has been finally paid as a settlement of the amount of tax due, from which no rebate is to be thereafter deducted, and accompany such separate deposits with the auditor's certificate, which shall set out the amount of such tax, the number, kind, description and owner and person in charge of such livestock, and the length of time for which such tax is paid, which amount shall be charged by the auditor, and credited by the treasurer, to a special fund hereby created and which shall be known as the migratory stock fund; such fund shall be reported in all reports of the auditor and treasurer, but the funds therein shall be considered as deposit funds and shall not be included in such reports or balances as public money. In all cases where a rebate for livestock is made by payment to the person by whom the tax on such livestock for the year was originally paid, such payment must be made upon the certificate of the assessor, which shall show the name of the person entitled thereto, the number, kind and description of livestock, the time for which such rebate is allowed, and the county or counties in which taxes on such livestock have been paid or secured other than the home county and upon the order of the auditor. On the first Monday in December of each year the assessor shall report to the auditor the net amount of such migratory stock fund, and the amount thereof due the several revenue districts in his county, and thereupon the auditor shall apportion the net amount in said fund amongst the several funds entitled thereto, charging the migratory livestock fund therewith, and shall certify such apportionment to the treasurer, who shall transfer the balance in said fund accordingly and credit the migratory stock fund with such net amount. After said first Monday in December no rebates on such fund or for taxes on livestock shall be allowed.

Historical: Laws 1901, 233, Sec. 19.

Same: Amount of Tax.

Sec. 1662. The assessor and collector shall be governed as to the amount of taxes to be by him collected on such transient stock, and

on all other stock and personal property, when not secured by lien on real estate, by the State and county rate of the previous year.

Historical: Laws 1901, 233, Sec. 21.

Same: Distraint of Stock.

Sec. 1663. The assessor and collector may distrain and sell such portion of transient and other stock, and all other personal property, when not secured by lien on real estate, as may be requisite to pay the tax due and the costs of sale, in the same manner provided by law for the distraint and sale of other personal property.

Historical: Laws 1901, 233, Sec. 22.
See Rev. St. 1887, Sec. 1427.

Same: Excess: Rebate.

Sec. 1664. When the rate is fixed for the year in which such collection is made, then if a sum in excess of the rate has been collected, such excess shall be paid by the county treasurer to the person from whom the collection was made, or to his agent, on demand, out of the migratory stock fund.

Historical: Laws 1901, 233, Sec. 23. | mand," is transposed to better express
The phrase, "or to his agent, on de- | the sense.

Same: Collection of Deficiency.

Sec. 1665. If a sum less than the rate fixed has been collected, the deficiency must be collected as other taxes on personal property are collected, if the property remains in the county.

Historical: Laws 1901, 233, Sec. 24. |

Lien of Tax: Enforcement by Action.

Sec. 1666. All taxes that shall become due to any county under the provisions of this article relating to the assessment of livestock, shall be a personal debt and demand against the owner to whom the property was first assessed, and may be enforced by any proper action in the name of the county, in any court of competent jurisdiction, and secured by attachment or other provisional remedy, which may be issued without undertaking or other security by or on behalf of the county; and said taxes shall be a first lien upon such livestock wherever found within the State, and a lien upon all real estate belonging to any owner of such livestock, situate within the county to which such taxes are due and payable, and such lien shall only be discharged by the actual payment of the taxes.

Historical: Laws 1901, 233, Sec. 25. | sions to the subject matter contem-
"Relating to the assessment of live- | plated thereby.
stock" inserted to confine the provi-

Non-Compliance With Article by Owner.

Sec. 1667. Any owner or agent neglecting to give any notice to any assessor or refusing to make any statement required by this article relating to the assessment of livestock, or making a wilfully false statement, or removing or suffering to be removed any such livestock from any county to evade the payment of any taxes payable to said county, according to the provisions of this article, shall be guilty of a misdemeanor.

Historical: Laws 1901, 233, Sec. 26.
See Laws 1893, 22, Sec. 7; re-en-
acted Laws 1899, 298, Sec. 7.

"Relating to the assessment of live-
stock" inserted for the reason stated
in the note to the preceding section.

Stock in Transit.

Sec. 1668. The provisions of this article relative to the taxation of livestock shall not apply to such stock in transit through this State by railroad or other means of public transportation.

Historical: Laws 1901, 233, Sec. 27.

Assessment of Property in Transit.

Sec. 1669. All personal property consigned to any person within this State from any place out of this State must be assessed as other property; and all property in transit to any county in this State must be assessed at its destination or in any county where it remains thirty days.

Historical: Laws 1901, 233, Sec. 40.
Rev. St. 1887, Sec. 1438.

ted: Pol. Code 1872, Sec. 3638; Deer-
ing's Code, ib.; as amended: Kerr's
Code, ib.

California Legislation: Similar
through "property," line 3, rest omit-

Assessment to Agents, Etc.

Sec. 1670. When a person is assessed as agent, trustee, bailee, guardian, executor or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

Historical: Laws 1901, 233, Sec. 41.
Rev. St. 1887, Sec. 1439.

Code 1872, Sec. 3639; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Owner of Corporate Stock Not to Be Assessed.

Sec. 1671. The owner or holder of stock in any firm or corporation, the entire capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

Historical: Laws 1901, 233, Sec. 42.
Rev. St. 1887, Sec. 1440.

California Legislation: Same: Pol.
Code 1872, Sec. 3640; repealed 1881.

Assessment of Bank Stock.

Sec. 1672. The stockholders of every banking association located in this State, and organized under the laws of the United States or of this State, must be assessed and taxed on the value of their shares of stock therein in the county, city, town, village and independent school district, authorized by law to collect revenue as in this chapter provided, where such bank is located, whether the stockholders reside there or not. Such shares must be listed and assessed with regard to the value of such shares by reason of any net undivided profits or surplus of such corporation and with regard to the ownership thereof, subject, however, to all deductions allowed in the assessment of other moneyed capital, and subject to the restriction that taxation of such shares must not be at a greater rate than is assessed on any other moneyed capital in the hands of individual citizens of the State in the place where such bank is located. Every such banking association must furnish to the assessor a full and correct list of the names and residence of its stockholders and the number of shares held by each. The taxes upon such shares must be assessed against

the holder of the same in the list of personal property, and must be paid by the bank. The real estate of such banking association is subject to State, county, municipal and district taxation as other real estate.

Historical: Laws 1901, 233, Sec. 43.
Rev. St. 1887, Sec. 1441.

Assessment of Corporate and Firm Property.

Sec. 1673. The property of every firm and corporation must be assessed in the county where the property is situated, and must be assessed in the name of the firm or corporation.

Historical: Laws 1901, 233, Sec. 44.
Rev. St. 1887, Sec. 1442.

Code 1872, Sec. 3641; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Property of Decedents.

Sec. 1674. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

Historical: Laws 1901, 233, Sec. 45.
Rev. St. 1887, Sec. 1443.

Code 1872, Sec. 3642; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Ferries and Toll Bridges.

Sec. 1675. Ferries and toll bridges must be assessed in the county where tolls are collected.

Historical: Laws 1901, 233, Sec. 46.
Rev. St. 1887, Sec. 1444.

Code 1872, Sec. 3643; different as amended: Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Assessment of Vessels.

Sec. 1676. All vessels of every class which are by law required to be registered must be assessed and the taxes thereon paid only in the county where the same are registered, enrolled or licensed.

Historical: Laws 1901, 233, Sec. 47.
Rev. St. 1887, Sec. 1445.

"county", line 3: Pol. Code 1872, Sec. 3644; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same except "or city and county" inserted after

Same.

Sec. 1677. Vessels registered, licensed or enrolled out of and plying, in whole or in part, in the waters of this State, the owners of which reside in this State, must be assessed in this State.

Historical: Laws 1901, 233, Sec. 48.
Rev. St. 1887, Sec. 1446.

Code 1872, Sec. 3645; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Boats and Small Craft.

Sec. 1678. All boats and small craft not required to be registered must be assessed in the county where their owner resides.

Historical: Laws 1901, 233, Sec. 49.
Rev. St. 1887, Sec. 1447.

Code 1872, Sec. 3646; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Property in Litigation.

Sec. 1679. Money and property in litigation, in possession of a county treasurer, of a court, clerk or receiver, must be assessed to such treasurer, clerk or receiver, and a statement of the amount of taxes due thereon filed in the case by the assessor, and the taxes must be paid thereon under the direction of the court. No order, judgment or decree of any court shall be construed to discharge the lien of any tax upon such property.

Historical: Laws 1901, 233, Sec. 50. See Rev. St. 1887, Sec. 1448.

California Legislation: Similar up to last sentence which is omitted: Pol. Code 1872, Sec. 3647; Deering's Code, ib.; Kerr's Code, ib.

erty in the hands of a receiver is not liable to seizure and sale for taxes, but the court having possession thereof should direct the receiver to pay the taxes. *Palmer v. Pettingill* (1898) 6 Ida. 346; 55 Pac. 653.

Property Held by Receiver: Prop-

Assessment of Concealed Property.

Sec. 1680. Any property wilfully concealed, removed, transferred or misrepresented by the owner or agent thereof to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of commissioners.

Historical: Laws 1901, 233, Sec. 51. Rev. St. 1887, Sec. 1449.

California Legislation: Same except

"supervisors" for "commissioners" last word: Pol. Code 1872, Sec. 3648; Deering's Code, ib.; Kerr's Code, ib.

Assessment of Omitted Property.

Sec. 1681. Any property discovered by the assessor to have escaped assessment for the preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

Historical: Laws 1901, 233, Sec. 52. Rev. St. 1887, Sec. 1450.

California Legislation: Same: Pol.

Code 1872, Sec. 3649; Deering's Code, ib.; Kerr's Code, ib.

Statement by Taxpayer.

Sec. 1682. The assessor must exact from each person a statement under oath setting forth specifically all the real and personal property owned by said person or under his control at twelve o'clock, noon, on the second Monday in January, and as to property not within the State on that day, on the day of assessment. Such statement shall be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession of, or under the control or management of, such person.

2. All property belonging to, claimed by, or in the possession of, or under the control or management of, any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession of, or under the control or management of, any corporation of which such person is president, secretary, cashier or managing agent.

But whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another official of the corporation, need not include such property in that statement

made by him, but such statement must show the name of the person or officer who made the statement in which the property is included.

4. The county, town, city, village or independent school district in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) the school district, road district or other revenue districts in which it is situated.

5. An exact description of all lands in parcels, improvements and personal property, including all vessels, steamers and other water crafts; and all taxable State, county, city or municipal or public bonds, and the taxable bonds of any person, firm or corporation, and deposits of money, gold dust or other valuables, and the names of the persons with whom such deposits are made and the places in which they may be found.

6. All shares of stock of any national banking association located within this State, and all solvent credits unsecured by deed of trust, mortgage or other lien on real or personal property, owned by, or due or owing to, such person or any firm of which he is a member, or any corporation of which he is president, secretary, cashier or managing agent.

Historical: Laws 1901, 233, Sec. 28. See Rev. St. 1887, Sec. 1429; amended Laws 1895, 101, Sec. 6; amended Laws 1897, 30, Sec. 2; re-enacted Laws 1899, 254, Sec. 6.

California Legislation: See Pol. Code 1872, Sec. 3630; as amended: Deering's Code, *ib.*; Kerr's Code, *ib.*

Cited: *Inland Lumber etc. Co. v. Thompson* (1905) 11 Ida. 508; 83 Pac. 933.

Statement—Duty of Owner: The owner is not required to list the property under the appropriate heads in the assessment roll, and he is not precluded from questioning the validity of the assessment on the ground that the property was not properly described and listed in the assessment roll. *People v. Owyhee Mining Co.* (1871) 1 Ida. 409.

Necessity of Statement: It is not necessary to a valid assessment that the sworn statement provided for in this section be demanded by the assessor, or that the person assessed give such statement or refuse to do so. *Co-operative Savings & Loan Assn v. Green* (1897) 5 Ida. 661; 51 Pac. 770.

Refusal to Give Statement: A tax payer who refuses or neglects after demand to furnish the assessor the statement required by this section cannot maintain an action against the assessor to recover taxes collected on cattle assessed by the assessor which had also been assessed in another county. *Erwin v. Hubbard* (1894) 4 Ida. 170; 37 Pac. 274.

Credits: Deduction of Debts.

Sec. 1683. In making up the amount of credits which any person, firm or corporation is required to list, he will be entitled to deduct from the gross amount of such credits the amount of all bona fide debts unsecured by mortgage or trust deed or other lien on real or personal property owing by him or any firm or corporation of which he is president, secretary, cashier or managing agent; but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, must be considered a debt within the meaning of this section; and no person is entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society; nor on account of a subscription to, or installment payable on, the capital stock of any company or corporation, and no liability of any person or persons, company or corporation as surety for

another must be deducted; and no liability of any person or persons, company or corporation on any bond or undertaking must be deducted; and no deduction must be made in any case unless the party claiming such deduction discloses to the assessor, by a written statement under oath, the name or names of the persons to whom such person or persons, firm, company or corporation, is indebted, with the amount of every such indebtedness; and also that such indebtedness is not barred by the statute of limitations, or if it is so barred, acknowledges such indebtedness in writing; and such written statement under oath shall be subject to examination by the board of equalization of the county having the equalization of the assessment roll upon which such deduction is claimed, upon demand of said board upon the assessor therefor. No debt is to be deducted unless the statement shows the amount of such debt as stated under oath in the aggregate, and that the same is due to bona fide residents of this State, or to firms or corporations doing business in this State.

Historical: Laws 1901, 233, Sec. 29.
See Rev. St. 1887, Sec. 1428; amended
Laws 1895, 101, Sec. 5; amended

Laws 1897, 30, Sec. 1; re-enacted
Laws 1899, 254, Sec. 5.

Blank Statements.

Sec. 1684. The State Auditor may have printed at State expense, and may furnish to the assessor of each county in the State at the actual cost thereof, to be paid as hereinafter provided, the blank forms of statements provided for in the next section; affixing thereto an affidavit which must be substantially as follows:

"I,....., do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property, subject to taxation, which I, or any firm of which I am a member, or any corporation, association or company of which I am president, secretary, cashier or managing agent, owned, possessed or controlled at twelve noon on the second Monday in January last, or now own, claim, possess or control, and which was not within the State on that day, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county, or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement, and that the debts therein stated as owing by me are owing to bona fide residents of this State, or to firms, associations or corporations doing business in this State, and hereon listed and sworn to as provided by law."

The affidavit to the statement on behalf of any firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the foregoing form.

Historical: Laws 1901, 233, Sec. 31.
See Rev. St. 1887, Sec. 1430; amended
Laws 1895, 101, Sec. 7; amended
Laws 1897, 30, Sec. 3; re-enacted
Laws 1899, 254, Sec. 7.

California Legislation: See Pol.
Code 1872, Sec. 3630; as amended:
Deering's Code, ib.; further amended:
Kerr's Code, ib.

Same: Form.

Sec. 1685. The form for such statement shall be as follows: *Provided*, A different size, may, when convenient, be used:

Historical: Laws 1901, 233, Sec. 32.

Assessor May Fill Statement.

Sec. 1686. The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out.

Historical: Laws 1901, 233, Sec. 33.
Rev. St. 1887, Sec. 1431.

Code 1872, Sec. 3631; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Examination of Witnesses.

Sec. 1687. The assessor may in his discretion subpoena and examine witnesses in relation to any statement or claim for deductions on account of unsecured debts due, and all persons are required to testify when requested so to do by him; and he may also issue subpoenas duces tecum to compel the production before him of all necessary books, papers or accounts to enable him to verify any such statement or claim for deduction of unsecured debts; and in case of refusal, the assessor must certify such fact to the judge of any court, who must issue a subpoena and compel a refusing witness to give testimony, and to produce all books, papers and accounts so demanded by the assessor, and must for each refusal impose a fine of not less than twenty nor more than one hundred dollars.

Historical: Laws 1901, 233, Sec. 34.
See Rev. St. 1887, Sec. 1432.

Code 1872, Sec. 3632; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

California Legislation: See Pol.

Refusal to Furnish Statement: Duty of Assessor.

Sec. 1688. If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statements therein provided for, or to comply with the other requirements of this chapter, the assessor must note the refusal on the assessment book, opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the assessor must not be reduced by the board of commissioners.

Historical: Laws 1901, 233, Sec. 35.
Rev. St. 1887, Sec. 1433.

Thompson (1905) 11 Ida. 614; 83 Pac. 941.

California Legislation: Similar: Pol. Code 1872, Sec. 3633; Deering's Code, ib.; additional provisions as amended: Kerr's Code, ib.

Failure to Furnish Statement: A taxpayer who fails to furnish the proper statement cannot maintain an action against the assessor to recover excess taxes. *Erwin v. Hubbard* (1894) 4 Ida. 170; 37 Pac. 274.

Cited: *Inland Lumber Co. v. Thompson* (1905) 11 Ida. 508; 83 Pac. 933; *Humbird Lumber Co. v.*

Absent or Unknown Owners.

Sec. 1689. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property.

Historical: Laws 1901, 233, Sec. 36.
Rev. St. 1887, Sec. 1434.

Code 1872, Sec. 3635; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: To Whom Assessed.

Sec. 1690. If the name of the absent owner is known to the as-

essor, the property must be assessed in his name; if unknown, the property must be assessed to "unknown owners."

Historical: Laws 1901, 233, Sec. 37.
Rev. St. 1887, Sec. 1435.

California Legislation: Same: Pol.

Code 1872, Sec. 3636; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Property in Other County: Transmission of Statement.

Sec. 1691. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same by mail or express to the assessor of the proper county, who must assess the same as other taxable property therein.

Historical: Laws 1901, 233, Sec. 38.
Rev. St. 1887, Sec. 1436.

California Legislation: Same: Pol.

Code 1872, Sec. 3637; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 5.

COUNTY BOARD OF EQUALIZATION.

Section

- 1692. General duties of board.
- 1693. Powers of board.
- 1694. Reduction in valuation: Application.
- 1695. Same: Examination of applicant.
- 1696. Same: Examination of witnesses.

Section

- 1697. Attendance of assessor on board.
- 1698. Same: Attendance of recorder.
- 1699. Change in assessment: Notice to owner.
- 1700. Record of corrections.
- 1701. Second meeting of board: Abstract of assessment.

General Duties of Board.

Sec. 1692. The board of county commissioners of each county within the State shall meet on the second Monday in July of each year to examine the assessment roll, and shall equalize the assessment of property of the county and of any city, town, village and independent school district authorized by law to collect revenue as in this chapter provided, for taxation within their respective counties. It is hereby made the duty of the board of county commissioners, at such meeting, to enforce and compel an assessment of the property within their respective counties, and in any such city, town, village and independent school district, at a fair cash value, and in so doing such board of county commissioners shall examine such assessment roll, name by name, together with the valuation of property of each taxpayer assessed, and shall raise or cause to be raised any assessment of property, which, in the judgment of the board, has not been assessed at a fair cash value. Such board must continue in session, for the purpose of equalizing such assessment, until the business of equalization is disposed of.

Historical: Laws 1901, 233, Sec. 53.
See Rev. St. 1887, Sec. 1475; amended Laws 1895, 101, Sec. 12; re-enacted Laws 1899, 254, Sec. 12; amended Laws 1899, 453, Sec. 1.

California Legislation: Similar in part: Pol. Code 1872, Sec. 3672; Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: Board created by Const. Art. 7, Sec. 12. Duties with

reference to assessment of net profits of mines: Sec. 1871.

Cited: *Inland Lumber etc. Co. v. Thompson* (1905) 11 Ida. 508; 83 Pac. 933.

Board of Equalization: County commissioners sitting as a board of equalization constitute a distinct body from the board of commissioners. *Gen. Custer Mining Co.* (1884) 2 Ida. 40; 3 Pac. 22.

Powers of Board.

Sec. 1693. The board has power to determine all complaints in regard to the assessed value of property, and may, except as prohibited in this chapter, correct any valuation by adding or reducing such sums as may be necessary to make it conform to the actual cash value.

Historical: Laws 1901, 233, Sec. 54.
Rev. St. 1887, Sec. 1476.

California Legislation: Similar:

Pol. Code 1872, Sec. 3673; as amended: Deering's Code, ib.; Kerr's Code, ib.

Reduction in Valuation: Application.

Sec. 1694. No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made.

Historical: Laws 1901, 233, Sec. 55.
Rev. St. 1887, Sec. 1477.

California Legislation: Same: Pol.

Code 1872, Sec. 3674; Deering's Code, ib.; Kerr's Code, ib.

Same: Examination of Applicant.

Sec. 1695. Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

Historical: Laws 1901, 233, Sec. 56.
Rev. St. 1887, Sec. 1478.

California Legislation: Same: Pol.

Code 1872, Sec. 3675; Deering's Code, ib.; Kerr's Code, ib.

Same: Examination of Witnesses.

Sec. 1696. Upon the hearing of the application the board may subpoena such witnesses, and hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

Historical: Laws 1901, 233, Sec. 57.
Rev. St. 1887, Sec. 1479.

California Legislation: Same: Pol.

Code. 1872, Sec. 3676; Deering's Code, ib.; Kerr's Code, ib.

Attendance of Assessor on Board.

Sec. 1697. During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement or introduce and examine witnesses on questions before the board.

Historical: Laws 1901, 233, Sec. 58.
Rev. St. 1887, Sec. 1480.

California Legislation: Same: Pol.

Code 1872, Sec. 3677; Deering's Code, ib.; Kerr's Code, ib.

Same: Attendance of Recorder.

Sec. 1698. The board may require the attendance of the county recorder, and he is directed to furnish the board abstracts and all other information which may be gained from the records in his office when so requested. The board may use information gained from such abstracts, or records, or elsewher, in equalizing the assessment of the property of the county, and it shall be the duty of the

assessor to enter upon the assessment book any property which has not been previously assessed by him; and any such assessment made and entered into the assessment book, as prescribed in this section, has the same force and effect as if made and entered by the assessor before the delivery of the assessment book to the clerk of the board. The tax collector must collect such subsequent assessments in the same manner, and receipt and account for the same in the same manner, as assessments placed on the assessment book prior to its delivery to the clerk of the board.

Historical: Laws 1901, 233, Sec. 59.
See Rev. St. 1887, Sec. 1481.

California Legislation: Similar:

Pol. Code 1872, Secs. 3678 and 3679;
as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Change in Assessment: Notice to Owner.

Sec. 1699. During the session of the board of county commissioners sitting as a board of equalization, it may direct and require the assessor to assess any taxable property that has escaped assessment, increase any valuation, or add to the amount, number, quantity, or value of any property, when a false, inaccurate, or incomplete list has been furnished or rendered; and in making such alterations, additions, or new assessments, he shall note the previous assessments "cancelled" and such new entries, with the alterations and additions, shall be deemed the true assessment of the property affected thereby. When any assessment made by the assessor is deemed by the board so incomplete or inaccurate as to render doubtful the collection of the tax thereon, the board shall direct him to make a new assessment thereof, as hereinbefore provided, marking such defective assessment "cancelled." All persons whose assessment is altered, modified, or affected in the amount of valuation of property charged to them, shall be notified by the clerk of said board, by letter deposited in the United States mail, postpaid and addressed to such person interested, at least ten days before the final action is taken in fixing and equalizing such assessment, of the day fixed when he may be heard upon the matters affecting the assessment of his property for taxation, which shall be on the fourth Monday in July of each year, or as soon thereafter as he can be heard or his matter be reached.

Historical: Laws 1901, 233, Sec. 60.
See Rev. St. 1887, Sec. 1482; amended Laws 1897, 94, Sec. 1; re-enacted Laws 1899, 254, Sec. 13.

California Legislation: See Pol. Code 1872, Sec. 3681; Deering's Code, ib.; as amended: Kerr's Code, ib.

Powers of Board: The board of equalization has power under this section to raise the assessment of an individual taxpayer, and it will be presumed that in doing so they act upon proper evidence. *Murphy v. Board of Equalization* (1899) 6 Ida. 745; 59 Pac. 715.

Notice to Taxpayer: This section only requires notice to be mailed to persons who have already been assessed and whose assessments are altered, modified or affected in the

amount of valuation charged to them; there is no requirement that a notice be mailed to a person who has never been assessed and whose assessment is ordered by the board. Every person who has not been assessed prior to the date on which the assessor delivers the assessment roll to the clerk of the board has notice that the board will order his property assessed if they discover it, and if he wants to know the amount for which his property is assessed, or to be heard in relation thereto, he should appear during the session convened on the fourth Monday in July, and present his grievances. *Inland Lumber etc. Co. v. Thompson* (1905) 11 Ida. 508; 83 Pac. 933.

Record of Corrections.

Sec. 1700. The clerk of the board must record in a book to be kept for that purpose all changes, corrections and orders made by the board, and also all proposed changes and corrections as to which notice is required to be given, and during its session or as soon as possible after its adjournment, he must enter upon the assessment book all changes and corrections made by the board.

Historical: Laws 1901, 233, Sec. 64.
Rev. St. 1887, Sec. 1484.

part: Pol. Code 1872, Sec. 3682;
Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Similar in

Second Meeting of Board: Abstract of Assessment.

Sec. 1701. On the fourth Monday in July the board of county commissioners must meet and continue in session until all the parties appearing have been heard, and until all the proposed additional assessments, changes and corrections have been acted upon, and the board may subpoena witnesses and hear evidence as provided upon application for reduction of assessment; and the clerk of the board must keep a record of their proceedings, and as auditor he may receive from the tax collector the original assessment book, and may retain the same for the time necessary to enter the additional assessments, changes and corrections ordered by the board; and at the same time it shall be the duty of the county auditor to prepare an abstract, upon blanks furnished by the State Board of Equalization, showing the total number of items or pieces of property and the total value thereof, in each class, as contained in said assessment book as corrected by the board of county commissioners, or in any subsequent assessment made therein or any other assessment book, and transmit such abstract by registered mail to the State Auditor on or before the first Monday in August: *Provided*, That the abstract of any subsequent assessment shall be sent in like manner at the earliest possible time subsequent to the date of the last assessment of property made in such county for such year. The form of such blank herein provided for shall be prepared in strict conformity with the classification of property in the assessment roll form herein provided for.

Historical: Laws 1901, 233, Sec. 65.
See Rev. St. 1887, Sec. 1485; amended
Laws 1895, 101, Sec. 14; re-enacted
Laws 1899, 254, Sec. 15.

Cited: Inland Lumber etc. Co. v.
Thompson (1905) 11 Ida. 508; 83
Pac. 933.

ARTICLE 6.
STATE BOARD OF EQUALIZATION.

Section

- 1702. Constitution of board.
- 1703. Meeting of board.
- 1704. Adjournment of board: Subpoena for abstracts.
- 1705. Liability for failure to transmit abstract.
- 1706. Equalization of valuations.
- 1707. Transmission of statement to county auditor.
- 1708. Board to prescribe rules.
- 1709. Record of proceedings.
- 1710. Assessment of telegraph, telephone and railroad companies.

Section

- 1711. Same: Time of meeting.
- 1712. Same: Failure of officer to furnish list.
- 1713. Same: Contents of list.
- 1714. Determination of valuation: Apportionment.
- 1715. Statement: Transmission to county auditor.
- 1716. Completion of work by board.
- 1717. Neglect of officers: Punishment.

Constitution of Board.

Sec. 1702. The State Board of Equalization shall consist of the Governor, Secretary of State, Attorney General, State Auditor and State Treasurer. The Governor shall be chairman and the State Auditor shall be secretary of the board. Any three members, including the chairman and secretary, shall be a quorum for the transaction of business.

Historical: Laws 1901, 233, Sec. 66.
Laws 1893, 72, Sec. 1; re-enacted
Laws 1895, 101, Sec. 15; re-enacted
Laws 1899, 254, Sec. 16.

California Legislation: See Pol.
Code 1872, Sec. 352; as amended:
Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Board created by
Constitution, Art. 7, Sec. 12. Duties
with reference to equalization of as-
sessment of net profits of mines: Sec.
1871.

Meeting of Board.

Sec. 1703. The said board shall meet at the State Capital on the second Monday in August of each year, and if all the abstracts of original assessments hereinbefore provided for and required to be transmitted to the State Auditor have been received, such abstracts shall be laid before said board, which shall then and there proceed to equalize the valuation of property throughout the State, as hereinafter provided.

Historical: Laws 1901, 233, Sec. 67.
Laws 1893, 72, Sec. 2; re-enacted

Laws 1895, 101, Sec. 15; re-enacted
Laws 1899, 254, Sec. 16.

Adjournment of Board: Subpoena for Abstracts.

Sec. 1704. In case the said abstracts have not all been received by the State Auditor by or before the second Monday in August, the said board shall adjourn from day to day until said abstracts are received, and may issue subpoenas for any officer or officers by this chapter required to transmit such abstracts, and who have failed to transmit the same, requiring such officer or officers to appear before the board forthwith to produce the abstracts herein provided for. The sheriff of Ada county is hereby designated as the officer by whom such subpoenas shall be served, and for such services said sheriff shall be paid the same compensation as is by law provided for similar services in civil cases.

Historical: Laws 1901, 233, Sec. 68.
Laws 1893, 72, Sec. 3; re-enacted

Laws 1895, 101, Sec. 15; re-enacted
Laws 1899, 254, Sec. 16.

Liability for Failure to Transmit Abstract.

Sec. 1705. The officer so failing to transmit such abstract, shall be liable on his official bond for the compensation paid said sheriff.

Historical: Laws 1901, 233, Sec. 69.
Laws 1893, 72, Sec. 3; re-enacted
Laws 1895, 101, Sec. 15; re-enacted
Laws 1899, 254, Sec. 16.

California Legislation: See Pol.
Code 1872, Sec. 3636; Deering's Code,
ib.; as amended: Kerr's Code, ib.

Equalization of Valuations.

Sec. 1706. The State Board shall equalize the valuation of property throughout the State as follows:

By classes, as shown by the abstracts transmitted from the various counties, county by county; in such equalization said board shall have power to increase the total valuation of any class of property

in the county as shown by the abstracts from that county when, in the opinion of the board, the valuation of that class, appearing in said abstract, is not just and equal as compared with the valuation of other classes of property in that county, or in other counties, because of its being less than the true valuation, as determined by such comparison, and the said board shall have power to decrease the valuation of any class of property, when, in the opinion of the board, the valuation of that class of property, appearing in the abstract is not just and equal, as compared with other classes of property in that county, or in other counties, because of its being in excess of the true valuation as determined by such comparison.

Second. The State Board shall have power to add to, or deduct from, the aggregate valuation, as shown by such abstracts, of all property in any county, such a percentage of such aggregate valuation as may be necessary, in the opinion of the board, to establish uniformity and equality of valuations among the several counties of the State.

The rate of the percentage of increase or decrease made by the board, either in equalizing among the classes of any county or in equalizing the aggregate of the counties, shall in all cases be even and not fractional. The increase or decrease made by the board in equalizing among the counties by aggregate, shall, in no case, increase or decrease the total valuation of the State, as shown by the total sum of all valuations as stated in the abstracts returned, by an amount exceeding fifteen per centum of said total aggregate valuation of the State.

Third. The State Board of Equalization shall have power to require the attendance of the assessors of the various counties of the State at such times and places as may be required by said board to assist the board in its duties, and the necessary expenses of said assessors in attending such meetings shall be a county charge.

Fourth. The State Board of Equalization, for the purposes of considering questions of taxation with the assessors of the several counties of the State, and for such other business as may be brought before the board, shall meet on the third Monday of January in each year, and at such other times as the chairman of the board may designate, but no taxes shall be equalized at said meetings.

Historical: Laws 1901, 233, Sec. 70. See Laws 1893, 72, Secs. 5, 6; re-enacted Laws 1905, 101, Sec. 15; re-enacted Laws 1899, 254, Sec. 16; amended Laws 1899, 452; Sec. 1.

Change in Valuations: Under the act of 1891, which is superseded by this and other sections of the present law, it was held that the power given the board to raise or diminish the valuation of the several counties could

only be exercised by adding to or deducting from the aggregate valuation of real and personal property by percentage, and that the board had no power to raise or diminish any class of property by percentage or otherwise, nor to assess or fix the value of any property. *Orr v. State Board of Equalization* (1891) 3 Ida. 190; 28 Pac. 416.

Transmission of Statement to County Auditor.

Sec. 1707. Within five days after the State Board shall have completed the equalization of valuations as by this article provided, the State Auditor, as secretary of said board, shall transmit by registered mail to the county auditor of each county, a certified statement showing the changes, if any, that have been made by said board in

the valuation of any class or of all classes of property in the county to which such statement is sent, or the changes in the aggregate valuation of all property in said county. The county auditor to whom such statement is sent shall forthwith, upon receipt thereof, proceed to enter in the assessment book of his county for the then current year, the changes (if any) that have been certified in such statement. When the entries herein required to be made by the county auditor have all been made, the county auditor shall forward to the State Auditor an affidavit setting forth the fact that all changes certified to him by the State Auditor have been entered as required by law.

Historical: Laws 1901, 233, Sec. 71. See Laws 1893, 72, Sec. 7; amended Laws 1895, 101, Sec. 15; re-enacted Laws 1899, 254, Sec. 16.

California Legislation: See Pol. Code 1872, Sec. 3695; Deering's Code, ib.; Kerr's Code, ib.

Board to Prescribe Rules.

Sec. 1708. The State Board shall prescribe such rules and regulations, not inconsistent with the provisions of this chapter, as shall be necessary to carry this chapter into effect; for the government of assessors in matters affecting the performance of the duties of the State Board and for the government of county auditors in the performance of their duties under this chapter; and generally for the government of county assessors and county auditors as may be required in connection with the equalization of valuations by said State Board. The said board shall provide, for the use of the board and of county auditors, such forms as are herein not otherwise provided for.

Historical: Laws 1901, 233, Sec. 72. See Laws 1893, 72, Sec. 8; re-enacted

Laws 1895, 101, Sec. 15, re-enacted Laws 1899, 254, Sec. 16.

Record of Proceedings.

Sec. 1709. The State Board shall keep a record of all its proceedings, which, when the board is not in session, shall be in the custody of the State Auditor, and be at all times subject to inspection by the public.

Historical: Laws 1901, 233, Sec. 73. Laws 1893, 72, Sec. 8; re-enacted

Laws 1895, 101, Sec. 15, re-enacted Laws 1899, 254, Sec. 16.

Assessment of Telegraph, Telephone and Railroad Companies.

Sec. 1710. The State Board of Equalization shall have exclusive power to assess and value for purposes of taxation all telegraph and telephone lines and the "railroad track" and "rolling stock" and franchises of all persons, companies, or corporations owning, operating or constructing any telegraph or telephone lines, or railroads wholly or partly within this State.

For the purposes of this chapter, "railroad track" shall be deemed to include the right of way, station, and other necessary grounds, superstructures upon such right of way, station, and other grounds, and all other immovable property used, operated, or occupied by any person, company or corporation, owning, operating or constructing any line of railroad, wholly or partly within this State, and reasonably necessary to the maintenance and operation of such road.

For the purposes of this chapter "rolling stock" shall be deemed

to include all movable property owned, used, occupied by, or operated in connection with, any railroad, wholly or partly within this State.

All property belonging to any person, company, or corporation, owning, operating, or constructing any railroad wholly or partly within this State, not included within the terms "railroad track" or "rolling stock," namely, property not reasonably necessary for the maintenance and successful operation of such road, consisting of vacant lots and tracts of lands, and lots and tracts of land together with the buildings thereon used for non-railroad business purposes; also tenement and residence property (except section houses); also hotels and eating houses situate more than one hundred feet from main line track shall be assessed by county assessors as other property is assessed in this State.

Historical: Laws 1901, 233, Sec. 74. Laws 1893, 72, Sec. 9; re-enacted Laws 1895, 101, Sec. 15, re-enacted Laws 1899, 254, Sec. 16.

Cited: *McConnel v. St. Bd. etc.* (1905) 11 Ida. 652; 83 Pac. 494.

Assessment of Railroad Property: Machinery and repair shops or other buildings not situated on the strip of land granted to a railroad as right of way by act of Congress March 3, 1875, should be assessed by the county assessor and not by the Territorial Board of Equalization. (Declared inapplicable in view of change of stat-

ute. *O. S. L. Ry. v. Gooding*, post.) *O. S. L. Ry. v. Yeates* (1888) 2 Ida. 397; 17 Pac. 457.

The term, "right of way" as used in this section, embraces only such land as is used as a way for the road and not such additional ground as may be used for the convenience of the railroad, but not as a part of its way; such additional ground is to be assessed by the county assessors and not by the State Board of Equalization. *O. S. L. Ry. v. Gooding* (1899) 6 Ida. 773; 59 Pac. 821.

Same: Time of Meeting.

Sec. 1711. The State Board shall meet for the purpose of valuing and assessing telegraph, telephone and railroad property on the second Monday of August of each year, and shall continue in session from day to day thereafter until such valuation and assessment is completed.

Historical: Laws 1901, 233, Sec. 75. Laws 1893, 72, Sec. 13; re-enacted

Laws 1895, 101, Sec. 15, re-enacted Laws 1899, 254, Sec. 16.

Same: Failure of Officer to Furnish List.

Sec. 1712. In case the president, secretary, superintendent or other principal accounting officer of any person, company or corporation owning, operating or constructing any telegraph or telephone line or railroad wholly or partly within this State, fail, neglect, or refuse to forward to the State Auditor the list required by the following section, by or before the second Monday of August of each year, then and in that case, the State Board shall proceed to assess and value, and shall assess and value the property of such person, company or corporation.

Historical: Laws 1901, 233, Sec. 76. Laws 1893, 72, Sec. 14; re-enacted

Laws 1895, 101, Sec. 15, re-enacted Laws 1899, 254, Sec. 16.

Same: Contents of List.

Sec. 1713. The president, secretary, superintendent or other principal accounting officer of any person, company or corporation, owning, constructing or operating any telegraph or telephone line or railroad wholly or partly within this State, shall list for assessment and

taxation all the following described property belonging to, owned, occupied or operated by such person, company or corporation in this State, viz: The whole number of miles of telegraph or telephone line, the number of wires, the number of instruments," the number of miles of railroad track (main, side and second tracks and turn-outs being separately stated), the property held for right of way, the amount and character of improvements, and the stations located on the right of way; and under the head of "rolling stock" shall list all movable property owned, used, occupied or operated in connection with any railroad, wholly or partly within this State.

Such lists shall specifically show the number of miles of such telegraph and telephone line or of "main track" in each county, district, city and incorporated town or village through which such line or railroad passes. And all such lists shall be verified by the oath of such president, secretary, superintendent or other principal accounting officer making the same.

Historical: Laws 1901, 233, Sec. 77. | Laws 1895, 101, Sec. 15, re-enacted
Laws 1893, 72, Sec. 10; re-enacted | Laws 1899, 254, Sec. 16.

Determination of Valuation: Apportionment.

1913 Spec. 832
Sec. 1714. The State Board shall determine the total value of each telegraph or telephone line and of all instruments used in connection therewith, and shall apportion such total value among the several counties into or through which such line passes, in the proportion which the number of miles of such line situated in each of such counties respectively bears to the entire length of such line within the State. The said board shall determine the total value of each railroad by adding together the value of the franchise, "railroad track" and "rolling stock" thereof, and shall apportion such total value among the several counties into or through which the main line of such railroad passes, in proportion to the total length of such line in the several counties respectively. After the board shall have determined such total valuation as aforesaid, said board shall assess such telegraph, telephone and railroad property for each mile thereof; which assessed value per mile shall be determined by dividing the total valuation, as determined by said board, by the number of miles of main line, or main track within the State.

Historical: Laws 1901, 233, Sec. 78. | Laws 1895, 101, Sec. 15, re-enacted
Laws 1893, 72, Sec. 11; re-enacted | Laws 1899, 254, Sec. 16.

Statement: Transmission to County Auditor.

Sec. 1715. When the total valuation of the telegraph, telephone and railroad property has been determined and assessed and apportioned as provided in Section 1714, the State Auditor shall prepare a statement to be sent to each county in which such telegraph, telephone or railroad property may be situated, specifying the number of miles of such line or road within the county, the assessed value per mile and the number of miles of main line or main track in each district, city or incorporated town therein. Such statement shall be certified by the State Auditor and sent to the county auditor of each county in which any part of such telegraph, telephone or railroad property may be situated, and shall be sent at the same

time that the statements provided for in Section 1707, are transmitted.

The county auditor of each county to which such statement is sent shall immediately enter in the assessment book for that year the amount of such telegraph, telephone or railroad property so certified, and the assessed value thereof, to the proper owner, and said county auditor shall also divide and adjust among the several districts, cities and incorporated towns and villages, independent school districts, and cities, towns and villages, organized under special laws or charters that are authorized as provided by law to adopt the provisions of this chapter, the proper amount and value of such property falling within each respectively; and for such purpose the auditor shall be furnished each year by the assessor with a statement of the number of miles of main track within each such revenue district.

Historical: Laws 1901, 233, Sec. 79.
See Laws 1893, 72, Sec. 12: amended

Laws 1895, 101, Sec. 15; re-enacted
Laws 1899, 254, Sec. 16.

Completion of Work by Board.

Sec. 1716. The State Board of Equalization must complete the assessment, valuation and equalization of all property hereinbefore mentioned on the fourth Monday in August of each year, and on that day it shall be their duty to ascertain the total assessed valuation of all property subject to taxation in the State. The State Board of Equalization shall on that day determine the amount of the State tax which each county must pay to the State, by apportioning the aggregate tax among the several counties of the State in the exact proportion that the total assessed valuation of each county, as shown by the assessment roll and subsequent assessment roll thereof for the year next preceding, bears to the aggregate assessment valuation of all the counties of this State for such preceding year; and for purpose of ascertaining such several and aggregate valuations, the board shall examine the annual reports of valuations made by the county auditors to the State Auditor, and such other reports as they may deem necessary.

The amount of State tax so found to be due from each county shall be certified to the county auditors of the several counties by the State Auditor, and said county auditors shall file the same with the board of county commissioners.

Historical: Laws 1901, 233, Sec. 80.
Laws 1895, 101, Sec. 15; re-enacted
Laws 1899, 254, Sec. 16.

Assessment Against Counties: The sum assessed against the various counties under and by virtue of this

section is not a judgment against the counties, which must be paid without deduction from any cause. *State v. Ada Co.* (1900) 7 Ida. 261; 62 Pac. 457.

Neglect of Officers: Punishment.

Sec. 1717. Any officer required by this article to perform any service who shall fail, neglect or refuse to perform such duty shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars and not more than three hundred dollars.

Historical: Laws 1901, 233, Sec. 81.
See Laws 1893, 72, Sec. 15; re-enacted
Laws 1895, 101, Sec. 15; Laws 1899, 254, Sec. 16. "Article" instead of "chapter" inserted for "act." While the 1901 law reads "act" and the pro-

vision would therefore seem applicable to the whole chapter, the 1901 law is, in this respect, a re-enactment of the 1893 law, which relates solely to the State Board of Equalization—the subject matter of this article.

ARTICLE 7.

ASSESSMENT BOOK AND ASSESSMENT ROLLS.

Section		Section	
1718.	Assessment book: Description and contents.	1725.	Same: Taxes charged to collector.
1719.	Same: Form of book.	1726.	Printing of assessment rolls.
1720.	Duties of county auditor: Corrections and changes.	1727.	Completion of assessment roll: Affidavit.
1721.	Same: Certificate and affidavit.	1728.	Notice of equalization.
1722.	Same: Tabulated statement.	1729.	Failure to complete book: Penalty.
1723.	Same: Transmission of statement.	1730.	Verification of statements.
1724.	Same: Delivery of assessment book to tax collector.		

Assessment Book: Description and Contents.

Sec. 1718. The State Auditor may have printed each year an assessment book, and also subsequent and delinquent assessment books, in the form herein provided, for each county in the State: *Provided*, That any county so specifying may have such subsequent assessment book bound with the assessment book, occupying the final requisite number of pages, as may be indicated, in which must be listed by the assessor, alphabetically arranged according to the owner's name, all property within the county; and in which must be specified, in separate columns, according to the classification provided for by the form of assessment roll under the appropriate head; when no head is given in case of personal property then under the head "not otherwise classified."

Such listing shall include: The name and residence of the person to whom the property is assessed. Land, by township, range, section, or fractional section; and when such land is not described as a Congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, and locality. The kind of improvements on land, when consisting of improvements on mining claims, quartz mills, concentrators, samplers, smelters, or other mining improvements, grist mills, saw mills, planing mills, shingle mills, mining, manufacturing, or irrigating ditches or toll roads. Franchises shall be listed in the column for improvements on real estate. When any tract of land is situated in two or more school or road or other revenue districts of the county, the part in each district must be separately designated, together with the improvements thereon. City, and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

All personal property shall be listed and classified as required by the form of the assessment roll showing the kind, number and quality; cattle shall be listed as thoroughbred, graded, common stock, beef, oxen; cows shall be listed separately; and horses shall be listed as thoroughbred, graded, common stock, stallions, and colts, jacks, jennets, or mules; sheep and goats shall be listed together; sheep as imported, fine, graded and common; goats, common and Angora; and other property as provided for by the form of the assessment roll; but a failure to enumerate and classify in detail such personal property does not invalidate the assessment, but the assessor shall forfeit

the sum of one hundred dollars for any failure to fully enumerate and classify the classes of property according to the classification herein provided for, or according to the requirements of the form of assessment roll herein designated, to be recovered on his official bond for the use of the county. All classifications may be made by abbreviating to the first letter, or first two letters when necessary to avoid confusion, of the word or words necessary to indicate the class or kind of property. The cash value of real estate, other than city or town lots. The kind and cash value of improvements on such real estate. The cash value of city or town lots. The cash value of improvements on city and town lots. The cash value of all personal property, exclusive of money, enumerating the several classes according to the subdivision of the assessment roll therefor. The amount of money. The school, road, and other revenue districts in which each piece of property assessed is situated. The total value of all property. The total value of property after equalization. The words "yes" and "no" in separate column, opposite the name of every person assessed as to whether liable to pay a poll tax, and if not liable, a statement of why exempt.

Historical: Laws 1901, 233, Sec. 88. See Rev. St. 1887, Sec. 1451; amended Laws 1895, 101, Sec. 8; re-enacted Laws 1899, 254, Sec. 8.

California Legislation: See Pol. Code 1872, Sec. 3650; as amended: Deering's Code, ib.; as amended: Kerr's Code, ib.

Assessment Roll: The columns in the assessment roll must be properly filled and the totals of taxes carried out in a separate money column; an

assessment is invalid where the different kinds of taxes are not separately set down in the assessment roll. *People v. Moore* (1877) 1 Ida. 662.

Under the revenue act of 1869 it was held that possessory claims in public lands must be listed as real estate, whereas improvements thereon must be listed as personal property. *People v. Owyhee Mining Co.* (1871) 1 Ida. 409.

Same: Form of Book.

Sec. 1719. The form of the assessment book must be substantially as follows:

[See form.]

(Subsequent and delinquent assessment rolls to be in the same form, except that such changes as are required by reason of the character of the roll shall be made.)

Historical: Laws 1901, 233, Sec. 89. See Rev. St. 1887, Sec. 1452; amended Laws 1895, 101, Sec. 9; re-enacted Laws 1899, 254, Sec. 9.

California Legislation: See Pol. Code 1872, Sec. 3651; as amended: Deering's Code, ib.; as amended: Kerr's Code, ib.

Duties of County Auditor: Corrections and Changes.

Sec. 1720. The county auditor must, as soon as he shall receive notice from the State Board of Equalization, by the certificate of the State Auditor, of any changes in the assessed valuation, and of the assessment of railway, telegraph, or telephone property in said county, make the corrections or changes ordered by the State Board of Equalization, add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book, and make report thereof to the board of county commissioners, for the purpose of making the county and other tax levies thereon, and when such levy or levies have been made, he shall carry out, on the assessment book in a separate money column, the

totals of taxes composed of State, county and other taxes to each person.

Historical: Laws 1901, 233, Sec. 82.
See Rev. St. 1887, Sec. 1500; amended

Laws 1895, 101, Sec. 16; re-enacted
Laws 1899, 254, Sec. 17.

Same: Certificate and Affidavit.

Sec. 1721. The county auditor shall make and transmit to the State Auditor an affidavit showing that such duties have been performed as herein required, and shall also forward to the State Auditor a certificate showing the total assessed valuation of such county after such changes have been made, and said auditor shall, upon the correction of the assessment roll after equalization, certify to the governing authority of cities, towns, villages, and independent school districts, situated within his county, and that are authorized by law to collect revenue in the manner provided herein, the total valuation of the property in each such city, town, village and independent school district. When thereafter the authority to which is delegated by law the power to levy taxes in such cities, towns, villages and independent school districts, shall file with the auditor the levy made for such cities, towns, villages, and independent school districts, he shall carry out on the assessment roll, the total taxes for each of such cities, towns, villages and independent school districts, as required for State and county purposes.

Historical: Laws 1901, 233, Sec. 83.

Cited: McConnel v. State Board,
etc. (1905) 11 Ida. 652; 83 Pac. 494.

Same: Tabulated Statement.

Sec. 1722. The county auditor must, on or before the second Monday of September in each year, prepare from the "assessment book" as finally corrected and equalized, and also from all subsequent assessments of such year, a statement showing in separate columns:

1. The total value of all property.
2. The value of real estate.
3. The value of improvements thereon.
4. The value of personal property, exclusive of money.
5. The amount of money.

Historical: Laws 1901, 233, Sec. 84.
See Rev. St. 1887, Sec. 1501; amended
Laws 1895, 101, Sec. 17; re-enacted
Laws 1899, 254, Sec. 13.

California Legislation: Similar:
Pol. Code 1872, Sec. 3728; Deering's
Code, ib.; as amended: Kerr's Code,
ib.

Same: Transmission of Statement.

Sec. 1723. The auditor must, as soon as such statement is prepared, transmit it by mail or express to the State Auditor.

Historical: Laws 1901, 233, Sec. 85.
See Rev. St. 1887, Sec. 1502.

Code 1872, Sec. 3729; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: See Pol.

Same: Delivery of Assessment Book to Tax Collector.

Sec. 1724. On or before the second Monday of September, he must deliver the corrected assessment book to the tax collector, with an affidavit attached thereto, and by him subscribed as follows:

"I....., do solemnly swear that, as clerk of the board

of commissioners of county, I have kept correct minutes of all the acts of the board touching alterations in the assessment book; that all alterations agreed to and directed to be made have been made and entered in the book, and that no changes or alterations have been made therein, except those authorized; and that as auditor I have reckoned the respective sums due as taxes, and have added up the columns of valuations and taxes, as required by law."

Historical: Laws 1901, 233, Sec. 86.
Rev. St. 1887, Sec. 1503.

California Legislation: See Pol.

Code 1872, Sec. 3732; as amended:
Deering's Code, ib.; as amended
Kerr's Code, ib.

Same: Taxes Charged to Collector.

Sec. 1725. On delivering the assessment book to the tax collector, the auditor must charge the tax collector with the full amount of the taxes levied and forthwith transmit by mail to the State Auditor a statement of the amount so charged.

Historical: Laws 1901, 233, Sec. 87.
Rev. St. 1887, Sec. 1504.

California Legislation: Similar:

Pol. Code 1872, Sec. 3734; as amended:
Deering's Code, ib.; further
amended: Kerr's Code, ib.

Printing of Assessment Rolls.

Sec. 1726. The State Auditor may have, each year, such a number of assessment, subsequent and delinquent assessment rolls printed in such form, appropriate changes being made to adapt the same to the necessities of subsequent and delinquent rolls, and uniformly, stoutly and economically bound and supplied with detached leather alphabetical tabs, in number sufficient to enable him to furnish one of each such rolls, to each county in the State. He shall let the printing and binding of all such rolls in any one year to a single firm or concern at the most reasonable rate obtainable for the work, which, in all cases, must be of good quality. Each assessor in the several counties of the State shall, on or before the first day of May in each year preceding the year for which such roll is required, notify the State Auditor of the number of pages required by him in the assessment, subsequent and delinquent assessment rolls of his county, and also of the number of tax statements required by him for the year; and thereupon the State Auditor shall have such tax statements so printed, and such assessment, subsequent and delinquent assessment rolls printed and bound with the number of pages required by each, and the name of the county and the year inserted in the assessment book and tax statement forms to make the same appropriate for each county; and he shall provide that such assessment rolls by him ordered shall be sent by the makers thereof direct to the assessors of the several counties; payment therefor to be made by the State, and shall be collected and paid for as other claims against the State are. The State Auditor shall certify to the State Board of Equalization the amount for which each county is chargeable on account of such assessment roll and tax statement which shall be the actual cost thereof to the State; and thereupon the State Board shall add such amounts to the amount of State tax apportioned to such county to be paid as a part of such State tax.

Historical: Laws 1901, 233, Sec. 90.

Completion of Assessment Roll: Affidavit.

Sec. 1727. On or before the first day of July in each year the assessor must complete his assessment roll. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows:

I, _____, assessor (or deputy assessor, as the case may be) of _____ county, do swear that between the second Monday in January and the first day of July, nineteen hundred and _____, I have made diligent inquiry and examination to ascertain all the property, real and personal, within the county, (or within the subdivision thereof assessed by me, as the case may be) _____ subject to assessment by me, and that the same has been listed and assessed on the assessment book, equally and uniformly, according to the best of my judgment, information and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill-will or otherwise; nor allowed anyone to escape a just and equal assessment through favor or reward or otherwise.

But the failure to take or subscribe such affidavit as required by this section shall not in any manner affect the validity of the assessment. The making of such affidavit is declared, however, to be a duty pertaining to the office of every assessor in this State, and when the same is to be made by the deputy assessor, it shall be the duty of the assessor to have the same properly made. In every case where the said affidavit is omitted from any assessment roll so completed as aforesaid, the board of equalization of the county must require the assessor to make the same or to have the same made by the deputy assessor, and upon the refusal or neglect of such assessor to supply such affidavit forthwith, the chairman of the board of county commissioners must immediately file, in the District Court of the county, an information, in writing, verified by his oath, charging such assessor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such case provided by law.

Historical: Laws 1901, 233, Sec. 91. See Rev. St. 1887, Sec. 1453; amended Laws 1895, 101, Sec. 10; amended Laws 1897, 10, Sec. 1; also 30, Sec. 4; re-enacted Laws 1899, 254, Sec. 10.

California Legislation: Similar in

Part: Pol. Code 1872, Sec. 3652; as amended: Deering's Code, ib.; Kerr's Code, ib.

Cited: Inland Lumber etc. Co. v. Thompson (1905) 11 Ida. 508; 83 Pac. 933.

Notice of Equalization.

Sec. 1728. As soon as completed, the assessment book, together with the statements, must be delivered to the clerk of the board of county commissioners, who must immediately give notice thereof, and of the time the board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct, and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

Historical: Laws 1901, 233, Sec. 92. Rev. St. 1887, Sec. 1454.

California Legislation: Same except "map book and" inserted before

“statements”, line 2, and “supervisors” for “commissioners”, line 3: Pol. Code 1872, Sec. 3654; Deering’s Code, ib.; similar as amended: Kerr’s Code, ib.

Cited: Inland Lumber etc. Co. v. Thompson (1905) 11 Ida. 508; 83 Pac. 933.

Failure to Complete Book: Penalty.

Sec. 1729. Every assessor who fails to complete his assessment book forfeits the sum of one thousand dollars, to be recovered on his official bond for the use of the county.

Historical: Laws 1901, 233, Sec. 93. See Rev. St. 1887, Sec. 1455. “Assessor” inserted for “auditor”. The assessor makes out the delinquent list. See Sec. 1727, ante.

California Legislation: See Pol. Code 1872, Sec. 3656; Deering’s Code, ib.; similar as amended: Kerr’s Code, ib.

Verification of Statements.

Sec. 1730. The auditor must verify by his affidavit attached thereto all statements made by him under the provisions of this chapter.

Historical: Laws 1901, 233, Sec. 94. Rev. St. 1887, Sec. 1505.

California Legislation: Same except

“title” for “chapter”: Pol. Code 1872, Sec. 3735; Deering’s Code, ib.; Kerr’s Code, ib.

ARTICLE 8.

PAYMENT OF TAXES BEFORE DELINQUENCY.

Section

- 1731. Publishing notice of delinquency.
- 1732. Same: Period of publication.
- 1733. Taxes payable in money.
- 1734. Payment of tax: Marking book: Receipts.
- 1735. Receipts supplied by State Auditor.
- 1736. Taxes due from estates.

Section

- 1737. When taxes become delinquent.
- 1738. No taxes collected between certain dates.
- 1739. Delivery of delinquent list and assessment roll.
- 1740. Same: Contents of list.
- 1741. Settlement with tax collector.
- 1742. Charge to tax collector. Addition of penalty.

Publishing Notice of Delinquency.

Sec. 1731. Within ten days after the receipt of the assessment book (the tax collector must publish a notice specifying that taxes will become delinquent on the first Monday in January next thereafter, and that unless paid prior thereto ten per cent penalty will be added thereon, with such other costs as may be provided by law.

Historical: Laws 1901, 233, Sec. 95. See Rev. St. 1887, Sec. 1515; amended Laws 1895, 101, Sec. 18; amended Laws 1899, 254, Sec. 19.

California Legislation: Similar: Pol. Code 1872, Sec. 3746; similar as amended: Deering’s Code, ib.; as amended: Kerr’s Code, ib.

Same: Period of Publication.

Sec. 1732. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in five public places in the county.

Historical: Laws 1901, 233, Sec. 96. Rev. St. 1887, Sec. 1516.

California Legislation: Same except “three public places in each town-

ship” for “five public places in the county”: Pol. Code 1872, Sec. 3749; Deering’s Code, ib.; Kerr’s Code, ib.

Taxes Payable in Money.

Sec. 1733. Taxes must be paid in lawful money of the United States.

Historical: Laws 1901, 233, Sec. 173.
Rev. St. 1887, Sec. 1707.

California Legislation: See Pol.

Code 1872, Sec. 3888; Deering's Code, ib.; same with additional provision as amended: Kerr's Code, ib.

Payment of Tax: Marking Book: Receipts.

Sec. 1734. The tax collector must mark the date of payment of any tax in the assessment book, opposite the name of the person paying. It shall be the duty of the State Auditor, if required by the county commissioners, to have the tax receipts printed; the style of printing such receipts shall be such as to enable the making of a carbon copy of each receipt, which shall remain bound in the receipt book, the original being detachable, and the year for which they are intended must be printed in skeleton type in red on the receipts as well as on the duplicates. But nothing in this chapter relating to the furnishing of tax statements, assessment rolls, tax receipts or other forms or books, by the State Auditor shall be construed so as to prohibit the board of county commissioners, in any county, from themselves contracting for such supplies or any part thereof: *Provided*, All such supplies by them contracted for shall conform in all respects to the requirements of this chapter: And, *Provided, further*, That the board of county commissioners, so electing to contract, shall have notified the State Auditor of such election on or before the twentieth day of July, 1901. The said receipt shall be in the following form:

[See form.]

Historical: Laws 1901, 233, Sec. 97.
See. Rev. St. 1887, Secs. 1517, 1518;
amended Laws 1897, 94, Sec. 2; re-
enacted Laws 1899, 254, Sec. 24.

California Legislation: Same

through "paying", line 3, rest omitted;
Pol. Code 1872, Sec. 3750; Deering's
Code, ib.; similar as amended: Kerr's
Code, ib.

Receipts Supplied by State Auditor.

Sec. 1735. The said receipts shall be supplied to the assessors of the several counties by the State Auditor, in number as ordered by each, at the same time ordering their assessment books and tax statement blanks; and shall be chargeable to the several counties at the actual cost thereof to the State. The same shall be collected in the manner provided herein for the collection of the amounts chargeable for assessment rolls and tax statement blanks. No receipts for property taxes other than those mentioned in this section must be used or given by the tax collector for the payment of any such taxes.

Historical: Laws 1901, 233, Sec. 98.

Taxes Due From Estates.

Sec. 1736. The probate judge must require every administrator and executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against it are paid.

Historical: Laws 1901, 233, Sec. 99. Rev. St. 1887, Sec. 1519.

California Legislation: Same except "the estate" for "it", last line: Pol. Code 1872, Sec. 3752; similar as

amended: Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: Taxes must be paid before distribution is made: Sec. 5630.

When Taxes Become Delinquent.

Sec. 1737. On the first Monday in January of each year all unpaid taxes are delinquent, and thereafter the tax collector must collect thereon for the use of the county and city, town, village and independent school district authorized to collect revenue in the manner provided by this chapter, a penalty of ten per cent and other costs provided by law.

Historical: Laws 1901, 233, Sec. 103. See Rev. St. 1887, Sec. 1523; amended Laws 1895, 101, Sec. 19; re-enacted Laws 1899, 254, Sec. 20.

California Legislation: Similar but penalty five per cent and other costs: Pol. Code 1872, Sec. 3756; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Application: This section only applies to property taxes and does not apply to poll taxes which become delinquent on the second Monday in December. *Sponberg v. Oneida Co.* (1899) 6 Ida. 722; 59 Pac. 532.

No Taxes Collected Between Certain Dates.

Sec. 1738. No taxes shall be collected or received from the first Monday of January to the fourth Monday of January, inclusive in each year.

Historical: Laws 1901, 233, Sec. 104. See Rev. St. 1887, Sec. 1524; amended Laws 1895, 101, Sec. 20; re-enacted Laws 1899, 254, Sec. 21.

California Legislation: Similar but "third Monday" for "fourth Monday"; Pol. Code 1872, Sec. 3757; repealed 1873.

Delivery of Delinquent List and Assessment Roll.

Sec. 1739. The tax collector must make out and, on the fourth Monday in January, deliver to the county auditor a complete delinquent list of all property and persons then owing taxes, and must deliver his assessment roll to the auditor to remain on file in his office; he must at the same time certify to the governing authority of cities, towns, villages and independent school districts in his county, authorized by law to collect revenue in the manner provided by this chapter, a complete delinquent list of all persons then owing taxes to such city and independent school district.

Historical: Laws 1901, 233, Sec. 105. See Rev. St. 1887, Sec. 1525; amended Laws 1895, 101, Sec. 21; re-enacted Laws 1899, 254, Sec. 22.

California Legislation: Similar

through "taxes", line 3, rest omitted: Pol. Code 1872, Sec. 3759; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Same: Contents of List.

Sec. 1740. In the list so delivered must be set down in alphabetical order all matters and things contained in the assessment book and relating to delinquent persons or property.

Historical: Laws 1901, 233, Sec. 106. Rev. St. 1887, Sec. 1526.

California Legislation: Same except "numerical or" inserted before "al-

phabetical": Pol. Code 1872, Sec. 3760; Deering's Code, ib.; Kerr's Code, ib.

Settlement With Tax Collector.

Sec. 1741. The auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the tax collector who acted under it therewith, and make a final statement with him of all taxes charged against him on the assessment book, and must require from him the treasurer's receipt for any existing deficiency.

Historical: Laws 1901, 233, Sec. 107.
See Rev. St. 1887, Sec. 1527.

Pol. Code 1872, Sec. 3761; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Similar:

Charge to Tax Collector: Addition of Penalty.

Sec. 1742. After settlement with the tax collector, as prescribed in the preceding section, the auditor must charge the tax collector with the amount of taxes due on the delinquent tax list, with ten per cent added thereto, and deliver the list, duly certified, to such tax collector.

Historical: Laws 1901, 233, Sec. 108.
Rev. St. 1887, Sec. 1528.

Pol. Code 1872, Sec. 3762; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

California Legislation: Similar:

ARTICLE 9.**SALES OF REAL PROPERTY FOR DELINQUENT TAXES.****Section**

- 1743. Publication of delinquent list.
- 1744. Notice appended to list.
- 1745. Period of publication.
- 1746. Designation of time and place of sale.
- 1747. Time and place of sale.
- 1748. Affidavit of publication.
- 1749. Collection of cost of publication.
- 1750. Commencement of sale.
- 1751. Postponement and adjournment.
- 1752. Sales of less than whole tracts.
- 1753. Amount of property to be sold.
- 1754. Sales to county: Subsequent assessment.
- 1755. Taxes accruing on property sold to county.
- 1756. Rights of cities, etc., on delivery of tax deeds to county.

Section

- 1757. Re-sale.
- 1758. Refusal to pay: Rejection of subsequent bids.
- 1759. Certificate of sale.
- 1760. Same: Signature.
- 1761. Entry of certificates.
- 1762. Lien of purchaser: Certificate of sales.
- 1763. Issuance of deed.
- 1764. Effect of deed as evidence.
- 1765. Same.
- 1766. Same: Effect as conveyance.
- 1767. Assessment book and delinquent list as evidence.
- 1768. Comparison of delinquent list with assessment book.
- 1769. Final settlement with collector.

Publication of Delinquent List.

Sec. 1743. On or before the fourth Monday in May, the tax collector must publish the delinquent list, which must contain the names of the persons, and a description of the property, delinquent, and the amount of the taxes and penalties and costs due, opposite each name and description, with the taxes due on personal property, added to taxes on real estate where the real estate is liable therefor, or the several taxes are due from the same person, for the purpose of making which publication the board of county commissioners

may allow the publisher not exceeding the sum of twenty-five cents for each description of property advertised.

Historical: Laws 1901, 233, Sec. 109. See Rev. St. 1887, Sec. 1530; amended Laws 1895, 101, Sec. 22; re-enacted Laws 1899, 254, Sec. 23.

California Legislation: Similar but "the first Monday in February" for "the fourth Monday in May", and concluding clause omitted: Pol. Code 1872, Sec. 3764; similar as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Publication of Delinquent List: This section does not authorize the assessor to audit and allow a publisher's claim for publishing the delinquent tax list, but such claim must be audited by the board of county commissioners. *Jolly v. Woodward* (1895) 4 Ida. 496; 42 Pac. 512.

Notice Appended to List.

Sec. 1744. The tax collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and penalties, are paid, the real property upon which such taxes are a lien will be sold at public auction.

Historical: Laws 1901, 233, Sec. 110. Rev. St. 1887, Sec. 1531.

California Legislation: Same except "percentage" for "penalties", line 3:

Pol. Code 1872, Sec. 3765: Deering's Code, ib.; same as amended except "at public auction" omitted: Kerr's Code, ib.

Period of Publication.

Sec. 1745. The publication must be made in a newspaper, or supplement thereto, once a week for three consecutive weeks published in the county; if it cannot be so published, then by posting in not less than three public places in the county, one of which shall be at the court house door.

Historical: Laws 1901, 233, Sec. 111. See Rev. St. 1887, Sec. 1532; amended Laws 1891, 235; amended Laws 1899, 254, Sec. 24.

California Legislation: Similar Pol. Code 1872, Sec. 3766; similar as amended with additional provisions: Deering's Code, ib.; as amended: Kerr's Code, ib.

Compensation for Publication: This section does not give the assessor the authority to fix by contract the compensation to be paid for publishing delinquent tax lists. *Jolly v. Latah Co.* (1897) 5 Ida. 301; 48 Pac. 1063.

Designation of Time and Place of Sale.

Sec. 1746. The publication must designate the time and place of sale.

Historical: Laws 1901, 233, Sec. 112. Rev. St. 1887, Sec. 1533.

California Legislation: Same: Pol.

Code 1872, Sec. 3767; Deering's Code, ib.; similar in part as amended: Kerr's Code, ib.

Time and Place of Sale.

Sec. 1747. The time of sale must not be less than forty-two nor more than fifty days from the first publication, and the place must be in front of the county court house.

Historical: Laws 1901, 233, Sec. 113. Rev. St. 1887, Sec. 1534.

California Legislation: Different:

Pol. Code 1872, Sec. 3768; as amended: Deering's Code, ib.; repealed 1905. See Kerr's Pol. Code, Sec. 3767.

Affidavit of Publication.

Sec. 1748. The collector, as soon as he has made the publication required, must file with the county auditor a copy of the publication.

with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereof, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in the county, that notices were put up in three public places in the county, designating the places therein, which affidavit is prima facie evidence of all the facts stated therein. Thereupon the auditor shall charge the assessor twenty-five cents for each description of property contained therein.

Historical: Laws 1901, 233, Sec. 114.
See Rev. St. 1887, Sec. 1535.

California Legislation: Similar with

last sentence omitted: Pol. Code 1872, Sec. 3769; Deering's Code, ib.; Kerr's Code, ib.

Collection of Cost of Publication.

Sec. 1749. The collector must collect, in addition to the taxes due on the delinquent list and the penalty added thereto by law, twenty-five cents on each lot, piece or tract of land separately described and assessed, and on the assessment of personal property, which must be paid into the county treasury.

Historical: Laws 1901, 233, Sec. 115.
See Rev. St. 1887, Sec. 1536; amended
Laws 1895, 101, Sec. 23; re-enacted
Laws 1899, 254, Sec. 25.

California Legislation: Different:
Pol. Code 1872, Sec. 3770; Deering's
Code, ib.; as amended: Kerr's Code, ib.

Commencement of Sale.

Sec. 1750. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice as in the next section provided, the collector, between the hours of ten o'clock a. m. and three o'clock p. m., must commence the sale of the property advertised, commencing at the head of the list and continuing alphabetically, or in the numerical order of lots and blocks, until completed.

Historical: Laws 1901, 233, Sec. 116.
Rev. St. 1887, Sec. 1537.

California Legislation: Same except
"as in the next section provided",

line 3, omitted: Pol. Code 1872, Sec. 3771; Deering's Code, ib.; different as amended: Kerr's Code, ib.

Postponement and Adjournment.

Sec. 1751. He must postpone the day of commencing the sale, by public announcement on the day and at the time and place fixed for the sale in the original or any amended published notice thereof, and he may adjourn the sale from day to day by public announcement of such adjournment made at the time and place for such adjourned sale; but the sale must be completed within two weeks from the day first fixed.

Historical: Laws 1901, 233, Sec. 117.
See Rev. St. 1887, Sec. 1538.

California Legislation: Different:

Pol. Code 1872, Sec. 3772; Deering's
Code, ib.

Sales of Less Than Whole Tracts.

Sec. 1752. The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate, in writing, to the tax collector, prior to the sale, what portion of the property embraced in each separate description he wishes sold, if less than

the whole; but if the owner or possessor does not, then the collector may designate it and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes, penalties and costs due, including fifty cents to the collector for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for a portion not less than the whole of the property embraced in any one separate description, the assessor may sell the whole thereof, and if there is then no purchaser on the first day that the property is offered for sale then when the property is offered thereafter for sale and there is no purchaser in good faith of the same, the whole amount of the property assessed in any or separate description shall be struck off to the county or the purchaser, and the duplicate certificate delivered to the county treasurer and filed by him in his office. No charge shall be made for the duplicate certificate when the county is a purchaser; and in such case the tax collector shall make an entry, "Sold to the county," on the delinquent list opposite the tax, and he shall be credited with the amount thereof in his settlement: *Provided*, The original certificates have been filed with the auditor.

Historical: Laws 1901, 233, Sec. 118.
See Rev. St. 1887, Sec. 1539.

California Legislation: Similar

through first sentence: Pol. Code 1872,
Sec. 3773; similar as amended: Deering's Code, ib.; repealed 1895.

Amount of Property to Be Sold.

Sec. 1753. Each tax sale, and the certificate therefor, shall be for such portion less than the whole amount of property embraced in any one separate description as the purchaser may agree to purchase; but in no case shall any sale be made, or tax certificate issued, for more property than is embraced in any one separate description of real estate and such personal property as may be assessed to the owner thereof, unless, in the judgment of the assessor, a greater number of pieces of real estate are necessary to be included to secure the lien of the tax for personal property thereon; in which case the several pieces of real estate selected by the assessor to be sold with the personal property, shall be included in the sale and tax certificate; every tax certificate so issued can be redeemed only by the payment of the whole amount of tax, penalty, cost and interest due upon all the property included therein.

Historical: Laws 1901, 233, Sec. 119.

Sales to County: Subsequent Assessment.

Sec. 1754. In case property is sold to the county as purchaser it shall be subsequently assessed, each year, but not sold for taxes, unless the county has disposed of its interest, but no person shall be permitted to redeem from such sale except upon payment of the amount due upon such tax certificate, and also of the amount of all subsequent assessments, penalties, costs and fees, and interest on each amount at the rate of eighteen per cent per annum from the date of tax sales in the respective years at which such assessment becomes delinquent.

Historical: Laws 1901, 233, Sec. 120.
See Rev. St. 1887, Sec. 1541. "At

which" inserted before "such assessment" to express the sense.

Taxes Accruing on Property Sold to County.

Sec. 1755. All taxes and penalties which have accrued upon property subsequently assessed after sale to the county, shall, as long as the county retains the tax certificate therefor and until the date when the county is entitled to a tax deed for such property, be entered by the assessor in red ink, with the amount for each year, under the current assessment for property for each year, but such amounts shall not be extended into the footing of such assessment roll. At the expiration of the time in which the county is entitled to a deed for any such property, the assessor shall immediately execute a deed therefor and file the same with the recorder for record. When the taxes due on any property so subsequently assessed are paid, the auditor shall cancel such tax opposite the original assessment for each year, showing the amount of tax and penalty paid thereon, with date paid.

Historical: Laws 1901, 233, Sec. 148.

Rights of Cities, Etc., on Delivery of Tax Deed to County.

Sec. 1756. Whenever the assessor makes and delivers to the county his tax deed for any property sold to the county for delinquent taxes, the cities, towns, villages and independent school districts in such county, authorized by law to collect taxes as provided by this chapter, shall receive of the proceeds of any sale thereof their proportionate interest therein from the county, to be paid as provided upon redemption of tax certificates for property sold for taxes.

Historical: Laws 1901, 233, Sec. 184.

Resale.

Sec. 1757. If the purchaser does not pay the taxes and costs before ten o'clock a. m. of the following day, the property on the next sale day, before the regular sale, must be resold for the taxes and costs.

Historical: Laws 1901, 233, Sec. 121.
Rev. St. 1887, Sec. 1542.

Code 1872, Sec. 3774; Deering's Code, ib.; repealed 1895.

California Legislation: Same: Pol.

Refusal to Pay: Rejection of Subsequent Bids.

Sec. 1758. The bid of any person refusing to make the payment for property purchased by him must not, after such refusal, be received on the sale of any property advertised in the delinquent list of that year.

Historical: Laws 1901, 233, Sec. 122.
Rev. St. 1887, Sec. 1543.

"after such refusal" omitted: Pol.
Code 1872, Sec. 3775; Deering's Code, ib.; repealed 1895.

California Legislation: Same except

Certificate of Sale.

Sec. 1759. After receiving the amount of taxes and costs, the collector must make out in duplicate a certificate, dated on the day of the sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount of State and county tax, poll taxes, costs and penalties; also giving the amount of all taxes, penalties and costs of every city, town, village and independent school district

in his county, that is authorized by law to collect revenue in the manner provided by this chapter, and each thereof, and the year of the assessment, and specifying the time when the purchaser will be entitled to a deed; also a guaranty of the county or municipality to which the tax is due that if, for any irregularity of the taxing officers this certificate be void, then such county or municipality will repay to the holder the sum paid therefor with interest at six per cent per annum from the date of its issuance.

Historical: Laws 1901, 233, Sec. 123, amended Laws 1905, 390, Sec. 1. See Rev. St. 1887, Sec. 1544.

California Legislation: See Pol. Code 1872, Sec. 3776; Deering's Code, ib.; Kerr's Code, ib.

Same: Signature.

Sec. 1760. The certificate must be signed by the collector and one copy delivered to the purchaser, and the other filed in the office of the county auditor.

Historical: Laws 1901, 233, Sec. 124. See Rev. St. 1887, Sec. 1545.

California Legislation: Same except "certificates" for "certificate" and "re-

corider" for "auditor": Pol. Code 1872, Sec. 3777; Deering's Code, ib.; See Kerr's Code, ib.

Entry of Certificates.

Sec. 1761. The collector, before delivering any certificate, must enter in a book the name of the party assessed, a description of the land sold corresponding with the description in the certificate, the date of sale, the purchaser's name and amount of tax, penalty and cost on account of State and county tax and the taxes of each of the cities, towns, villages and independent school districts in such county, authorized by law to collect revenue as provided in this chapter, stated separately, and the total amount paid; and must regularly number the descriptions on the margin of the book and put a corresponding number on each certificate. Such book must contain blank spaces following each entry of a tax certificate therein, in which may be entered the name of the redemptioner, and the time when paid, the amount paid for such redemption and to whom sold. He shall keep the entries of certificates sold to individuals and to the county for any year separately, and shall arrange them in alphabetical order of the names of the persons assessed. He shall, at the same time, make, in like books, an exact copy of his said tax certificate book, and furnish one each of such copies to the county auditor and the county treasurer at the time of delivering the original and duplicate tax certificates to said officers as required by law. At such time it shall be the duty of the county auditor to compare the duplicate tax certificates of property sold to individuals, and the original tax certificates of property sold to the county, with his copy of said certificate book, and to certify therein that the same is correct. It shall be the duty of the county treasurer to make a like comparison of the duplicate tax certificates of property sold to the county at the time the same are filed with him by the assessor, and to certify that the same is correct as to such certificates; and such book and duplicate and original tax certificates so delivered to and filed with the ex-officio auditor and recorder of the county shall, for all purposes for which necessary in connection with the lien upon or title to

any real estate, be considered filed with, and a part of the records of, such officer as ex-officio recorder.

Historical: Laws 1901, 233, Sec. 125.
See Rev. St. 1887, Sec. 1546.

Code 1872, Sec. 3778; Deering's Code, ib.; repealed 1895.

California Legislation: See Pol.

Lien of Purchaser: Certificate of Sales.

Sec. 1762. On filing the certificates with the ex-officio auditor and recorder, the lien vests in the purchaser and is only divested by the payment to the county treasurer, on certificate of the auditor, for the use of the purchaser, the whole amount of money paid for such certificate, together with interest thereon at the rate of eighteen per cent per annum until paid, which said per cent of interest shall be construed in the nature of a penalty. At the time of filing such certificate, the assessor must certify to the governing authority of cities, towns, villages and independent school districts authorized by law to collect revenues as in this chapter provided, a complete list of property sold in such city, town, village and independent school district for delinquent taxes.

Historical: Laws 1901, 233, Sec. 126.
See Rev. St. 1887, Sec. 1547; amended
Laws 1895, 101, Sec. 24; re-enacted
Laws 1899, 254, Sec. 26.

California Legislation: See Pol.
Code 1872, Sec. 3779; Deering's Code,
ib.; repealed 1895.

Issuance of Deed.

Sec. 1763. If the property is not redeemed within three years from the date of sale, the assessor or ex-officio tax collector, or his successor in office, must make to the purchaser or the other person lawfully entitled thereto, upon demand by him, a deed to the property, reciting in the deed substantially the matters contained in the certificate; and that no person redeemed the property during the time allowed by law for its redemption. The assessor as ex-officio tax collector is entitled to receive for the county from the purchaser two dollars for making such deed.

Historical: Laws 1901, 253, Sec. 129.
See Rev. St. 1887, Sec. 1553; amended
Laws 1895, 101, Sec. 26; re-enacted
Laws 1899, 254, Sec. 28; amended

Laws 1899, 376, Sec. 1. Last paragraph of section: the first paragraph relates to the redemption from tax sales, and is found in Sec. 1772.

Effect of Deed as Evidence.

Sec. 1764. The matters recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

Historical: Laws 1901, 233, Sec. 134. Rev. St. 1887, Sec. 1555.

California Legislation: Same except "primary" for "prima facie", line 3: Pol. Code 1872, Sec. 3786; Deering's Code, ib.; Kerr's Code, ib.

Effect of Tax Deed: A tax deed is prima facie evidence of the facts and things mentioned in the eight subdivisions of this section; and to defeat such deed the defendant must show the non-existence of such facts, or some of them. The fact that there is

no sworn statement of the owner of the property on file, or any marginal entry on the assessment book showing that he refused to give such statement, is not sufficient to establish the invalidity of a tax deed. Co-operative Savings & Loan Assn. v. Green (1897) 5 Ida. 661; 51 Pac. 770.

A party may show in opposition to a tax deed that the property was not assessed or equalized as required by law. McMasters v. Torsen (1897) 5 Ida. 536; 51 Pac. 100.

Same.

Sec. 1765. Such deed duly acknowledged and proved, is prima facie evidence of the regularity of all other proceedings, from the assessment by the assessor inclusive up to the execution of the deed.

Historical: Laws 1901, 233, Sec. 135. See Rev. St. 1887, Sec. 1556.

California Legislation: Different:

Pol. Code 1872, Sec. 3787; Deering's Code, ib.; as amended: Kerr's Code, ib.

Same: Effect as Conveyance.

Sec. 1766. The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except any lien for taxes which may have attached subsequently to the assessment.

Historical: Laws 1901, 233, Sec. 136. Rev. St. 1887, Sec. 1557.

California Legislation: See Pol.

Code 1872, Sec. 3788; as amended: Deering's Code, ib.; as amended: Kerr's Code, ib.

Assessment Book and Delinquent List as Evidence.

Sec. 1767. The assessment book, or delinquent list or a copy thereof, certified by the county auditor showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all forms of law in relation to the assessment and levy of such taxes have been complied with.

Historical: Laws 1901, 233, Sec. 137. Rev. St. 1887, Sec. 1558.

California Legislation: Similar:

Pol. Code 1872, Sec. 3789; as amended: Deering's Code, ib.; as amended: Kerr's Code, ib.

Comparison of Delinquent List With Assessment Book.

Sec. 1768. The tax collector must annually, within fifteen days after the tax sale of any year has been completed, attend at the office of the auditor, with the delinquent tax list and all certificates of tax sales required by law to be filed by him with the auditor, and the auditor must then carefully compare the lists with the assessments of persons and property not marked as "paid" on the assessment and subsequent assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book and also note that all descriptions of property which has been sold at tax sale are represented by proper tax certificates as provided by law, and shall thereupon administer to the tax collector an oath, to be written and subscribed in the delinquent list, that every person

and all property assessed in the delinquent list on which taxes have been paid, has been credited in the list with such payment.

Historical: Laws 1901, 233, Sec. 146. See Rev. St. 1887, Sec. 1567; amended Laws 1895, 101, Sec. 28; re-enacted Laws 1899, 254, Sec. 30.

California Legislation: See Pol. Code 1872, Sec. 3797; Deering's Code, ib.; as amended: Kerr's Code, ib.

Final Settlement With Collector.

Sec. 1769. The auditor must foot up the amount of taxes, penalties and costs which have been paid to the assessor upon such delinquent roll, the amount of all taxes therein which have been sold to the county, and the penalties thereon. And (after charging the assessor in his proper account with all penalties and costs due on account of such taxes on said roll) he shall credit the tax collector therewith, having a final settlement with him, and the delinquent roll must thereafter remain on file in the auditor's office. All taxes due on property subsequently assessed after sale to the county for any year, and remaining unpaid, must be credited to the tax collector with the penalty thereof.

Historical: Laws 1901, 233, Sec. 147. See Rev. St. 1887, Sec. 1569.

Code 1872, Sec. 3799; as amended: Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

ARTICLE 10.

REDEMPTION AND ASSIGNMENT OF CERTIFICATES.

Section

- 1770. Time for redemption.
- 1771. Currency in which made: Tax redemption fund: Entries: Payment to purchaser.
- 1772. Redemption fund: Entries in book.
- 1773. Redemption from purchase by county.

Section

- 1774. Sale of certificates held by county.
- 1775. Same: Rights of purchaser.
- 1776. Assignees of certificates: Entries of names.

Time for Redemption.

Sec. 1770. Redemption of the property sold may be made by the owner or any party in interest within three years from the date of the purchase.

Historical: Laws 1901, 233, Sec. 127. See Rev. St. 1887, Sec. 1548; amended Laws 1895, 101, Sec. 25.

Pol. Code 1872, Sec. 3780; additional provision as amended: Deering's Code, ib.; different as amended: Kerr's Code, ib.

California Legislation: Same except "twelve months" for "three years":

Currency in Which Made: Tax Redemption Fund: Entries: Payment to Purchaser.

Sec. 1771. Redemption must be made in lawful money of the United States; and when made from the auditor and treasurer the redemptioner shall, upon the auditor's certificate, pay to the treasurer the amount necessary to redeem the same which shall be charged by the county auditor and credited by the county treasurer to a fund to be known as the "Tax Redemption Fund," and upon the payment of such amount to the county treasurer, he shall immediately enter in his tax certificate book the name of the redemptioner and the time when redeemed and the amount paid, and upon the return of

the treasurer's receipt to the auditor and assessor for such amount, the auditor and assessor shall each make a like entry in his tax certificate book, and the auditor shall indorse on the duplicate certificate in his office the fact of such redemption, for which he shall collect for the county a fee of one dollar. Whenever, after any such redemption, the person to whom the original tax certificate was issued, or any lawful owner thereof, shall present to the auditor such original certificate marked redeemed and signed by him, together with legal evidence of his lawful ownership thereof, if other than the person to whom issued, the auditor shall issue to him an order on the county treasurer for the amount theretofore paid on account of such redemption; crediting the "Tax Redemption Fund" on account of such order; and upon presentation of such auditor's order the county treasurer shall pay the same, charging said "Tax Redemption Fund" therefor, and returning such order as his voucher for such payment at the time of making his regular reports to the county auditor as provided by law.

Historical: Laws 1901, 233, Sec. 128.
See Rev. St. 1887, Sec. 1549.

Redemption Fund: Entries in Book.

Sec. 1772. Such tax redemption fund shall be reported in all reports of the auditor and treasurer, but the fund therein from time to time shall be considered as deposit funds and shall not be included in such reports or balances therein as public money. In all cases where the redemption of any tax certificate is made by payment to the person to whom the original tax certificate was issued or to the lawful owner thereof, such person, or the lawful owner thereof, must personally direct the auditor and assessor each to make the necessary entries in their respective tax certificate books, and the auditor to mark the duplicate thereof redeemed, and must pay the auditor for the use of the county a fee of one dollar therefor; and at the same time surrender the original tax certificate marked redeemed and signed by him: *Provided*, That upon legal documentary evidence of the ownership of such tax certificates being furnished, and upon the signature of the owner duly acknowledged as required by law to transfer title to real estate, together with the surrender of the tax certificate in like manner, and the payment of like fee, the auditor and assessor shall each proceed relative to such redemption as provided when such person or the lawful owner thereof is personally present.

Historical: Laws 1901, 233, Sec. 129. | to the issuance of a deed, which is
Omitting the last paragraph relating | found in Sec. 1763.

Redemption From Purchase by County.

Sec. 1773. In all cases where the county has become the purchaser of property at any tax sale, and the tax certificates have been issued to the county therefor and duly entered in the certificate books of the county auditor and treasurer, redemption thereof may be made by any person in interest, in the same manner and upon like terms as is herein provided for the redemption of such tax certificates to the auditor and county treasurer when sold to individuals: *Provided*, however, That in every such redemption of property sold to the

county, the county auditor, in his certificate to the treasurer, shall apportion the total amount paid for taxes, penalties, costs and interest, to the several funds provided for in such levy except State ad valorem, in the amount levied for each together with interest at the rate of seven per cent per annum on the amount apportioned to each fund, and the balance thereof to the current expense fund of the year of such redemption; and the amount of all taxes, penalties and costs, other than State and county, and interest thereon, to each of the several cities, towns, villages and independent school districts authorized by law to collect revenue as provided herein, in such county according to their several interests, and the county treasurer shall credit to each of such cities, towns, villages and independent school districts, such amounts apportioned thereto, and pay out of such funds all warrants drawn thereon. The county auditor is authorized to draw his warrant upon such funds whenever there is any amount to the credit of such cities, towns, villages and independent school districts, without an order of the board of county commissioners, and such warrants shall be payable to the treasurers of such cities, towns, villages and independent school districts, for the taxes, costs and penalties for which any property included in such certificate was sold, according to their several interests, together with the interest thereon that may be due, and deliver the same; charging the treasurers therewith in such several funds.

Historical: Laws 1901, 233, Sec. 130.
See Rev. St. 1887, Sec. 1554; amended

Laws 1895, 101, Sec. 27; re-enacted
Laws 1899, 254, Sec. 29.

Sale of Certificates Held by County.

Sec. 1774. All tax sale certificates held by the county, shall be on sale by the auditor at all times during office hours, for an amount equal to the face thereof, with accrued interest. Whenever any person shall desire to purchase the same, he shall pay to the treasurer, upon the certificate of the auditor, the total amount expressed in each tax certificate as tax, penalty and cost, together with interest thereon from date of issue to date of purchase at the rate of eighteen per cent per annum; and thereupon the treasurer shall enter in the proper column of the tax certificate book the name of the person to whom sold, and deliver to him the duplicate tax certificate therefor. Upon the return of the treasurer's receipt for the payment of such purchase money, one each to the assessor and auditor, and the production of the duplicate tax certificate to the auditor, the auditor shall indorse on such duplicate tax certificate, "Sold to (naming him) thisday of....., 190....," and shall sign the same as auditor; and thereupon shall file the same with the duplicate tax certificates sold to individuals; indorsing in a like manner the original tax certificate, affixing his seal thereto, and delivering it to the purchaser. The treasurer and auditor shall each enter on his tax certificate book the name of such purchaser opposite each such certificate purchased.

Historical: Laws 1901, 233, Sec. 131.

Same: Rights of Purchaser.

Sec. 1775. The auditor shall apportion the amount received from

the sale of any or all such tax certificates, as moneys for the redemption thereof, are herein required to be apportioned. After any such sale of tax certificates held by the county for delinquent taxes, the purchaser shall be considered an individual purchaser thereof, and entitled to all the provisions of law relating to such purchasers as if he had purchased at such tax sale; and all certificates so sold may be redeemed in like manner as provided for the redemption of tax certificates sold to individuals.

Historical: Laws 1901, 233, Sec. 132.

Assignees of Certificates: Entries of Names.

Sec. 1776. Upon the proper notice to the auditor, any lawful owner other than the person to whom originally sold, may have his name entered in the tax certificate book as the owner of any certificate owned by him, and the auditor must notify him, and all original purchasers who have not disposed of their interests, of the redemption of any tax certificate so entered as owned by him.

Historical: Laws 1901, 233, Sec. 133.

ARTICLE 11.

SEIZURE AND SALE OF PERSONALTY.

Section	Section
1777. Seizure of personalty.	1781. Bill of sale.
1778. Same: Sale.	1782. Excess proceeds: Return to owner.
1779. Notice of sale.	1783. Disposition of unsold property.
1780. Fees for sale.	

Seizure of Personalty.

Sec. 1777. The tax collector may, at any time after it is assessed, collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent.

Historical: Laws 1901, 233, Sec. 139.
Rev. St. 1887, Sec. 1560.
California Legislation: See Pol. Code 1872, Sec. 3821; Deering's Code, ib.; Kerr's Code, ib.

Lien on Personalty: A tax is not a lien on personal property until actual seizure thereof. Palmer v. Pettingill (1898) 6 Ida. 346; 55 Pac. 653.

Same: Sale.

Sec. 1778. The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage and costs.

Historical: Laws 1901, 233, Sec. 140.
Rev. St. 1887, Sec. 1561.
California Legislation: See Pol. Code 1872, Sec. 3822; Deering's Code, ib.; Kerr's Code, ib.

Notice of Sale.

Sec. 1779. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

Historical: Laws 1901, 233, Sec. 141.
Rev. St. 1887, Sec. 1562.
California Legislation: See Pol. Code 1872, Sec. 3822; Deering's Code, ib.; Kerr's Code, ib.

Fees for Sale.

Sec. 1780. For seizing and selling personal property, the tax collector may charge in each case, for each mile necessarily traveled in going only, twenty-five cents.

Historical: Laws 1901, 233, Sec. 142.
See Rev. St. 1887, Sec. 1563.

Code 1872, Sec. 3822; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

Bill of Sale.

Sec. 1781. On payment of the price bid for any property sold, the delivery thereof with a bill of sale, vests the title thereto in the purchaser.

Historical: Laws 1901, 233, Sec. 143.
Rev. St. 1887, Sec. 1564.

Code 1872, Sec. 3822; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

Excess Proceeds: Return to Owner.

Sec. 1782. All excess, over the taxes, per cent and costs, of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury subject to the order of the owner, his heirs or assigns.

Historical: Laws 1901, 233, Sec. 144.
Rev. St. 1887, Sec. 1565.

Code 1872, Sec. 3822; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

Disposition of Unsold Property.

Sec. 1783. The unsold portion of any property may be left at the place of sale at the risk of the owner.

Historical: Laws 1901, 233, Sec. 155.
Rev. St. 1887, Sec. 1566.

Code 1872, Sec. 3822; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

ARTICLE 12.**ERRORS, MISTAKES AND INFORMALITIES.****Section**

1784. Assessment book: Correction of errors.
1785. Same: Republication.
1786. Same: Manner of publication.
1787. Use of abbreviations.
1788. Informality not fatal to tax proceedings.

Section

1789. Mistake in ownership.
1790. Partial invalidity of assessment: Necessity of protest.
1791. Cancellation and refunding of taxes erroneously assessed.

Assessment Book: Correction of Errors.

Sec. 1784. Omissions, errors or defects in form in any assessment book, when it can be ascertained therefrom what was intended, may be supplied or corrected by the assessor at any time prior to the delinquent sale and after the original assessment was made.

Historical: Laws 1901, 233, Sec. 167.
Rev. St. 1887, Sec. 1700.

Pol. Code 1872, Sec. 3881; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

California Legislation: Similar:

Same: Republication.

Sec. 1785. When the omission, error or defect has been carried

into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

Historical: Laws 1901, 233, Sec. 168.
Rev. St. 1887, Sec. 1701.

Code 1872, Sec. 3882; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Manner of Publication.

Sec. 1786. The publication must be made in the same manner as the original publication, and for not less than one week.

Historical: Laws 1901, 233, Sec. 169.
Rev. St. 1887, Sec. 1702.

Code 1872, Sec. 3883; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Use of Abbreviations.

Sec. 1787. In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations and figures may be used to designate the township, range, section or parts of section, lot or block, and kind of improvement or personal property in the extension thereof.

Historical: Laws 1901, 233, Sec. 170.
See Rev. St. 1887, Sec. 1703.

ted: Pol. Code 1872, Sec. 3884; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

California Legislation: Same through "parts of section", rest omit-

Informality Not Fatal to Tax Proceedings.

Sec. 1788. No assessment, or act relating to assessment, or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

Historical: Laws 1901, 233, Sec. 171.
Rev. St. 1887, Sec. 1704.

Code 1872, Sec. 3885; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Mistake in Ownership.

Sec. 1789. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

Historical: Laws 1901, 233, Sec. 152.
See Rev. St. 1887, Sec. 1574. "Imposed" inserted after "correctly" to express the sense.

California Legislation: Same: Pol.
Code 1872, Sec. 3807; Deering's Code, ib.; Kerr's Code, ib.

Partial Invalidity of Assessment: Necessity of Protest.

Sec. 1790. Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale shall not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass title to the grantee, unless the owner of the property, or his agent, shall, not less than six days before the time at which the property is advertised to be sold, deliver to the tax collector a protest in writing, signed by the owner or his agent, specifying the portion of tax which he claims to be invalid, and the grounds upon which such claim is based.

Historical: Laws 1901, 233, Sec. 138.
Rev. St. 1887, Sec. 1559.

California Legislation: Same except
"by the respective owner or agent"

for "by the owner or his agent", line
8; Deering's Pol. Code, Sec. 3811; re-
pealed 1895.

Cancellation and Refunding of Taxes Erroneously Assessed.

Sec. 1791. All taxes included in the delinquent roll, charged on account of double assessments, property erroneously assessed, or which, by reason of any bona fide error of the assessor, or for any lawful reason, should not be collected, and which has not been therefore deducted, shall be reported to the board of county commissioners at their first regular meeting after the settlement of the tax collector with the auditor, and if the said board is satisfied that the same should not be collected, they shall order the auditor to cancel the same upon said roll; and thereupon the auditor, after cancelling each of such items on said delinquent roll, shall credit the assessor with the amount of all such cancellations in his property tax account with the county. The county commissioners of the various counties in the State of Idaho, shall have power to refund to the tax payer any money to which he may be entitled by reason of the taxes upon property having been paid twice for the same year, or any moneys to which any tax payer may be entitled by reason of the double assessment or erroneous assessment of property through clerical or other errors, or where, in the judgment of the county commissioners, the assessment upon property was so grossly overestimated that the same was a mistake. The said money shall be refunded by warrants drawn on the current expense fund of the county. The county commissioners shall also have power to refund, in the same manner, money paid by any purchaser of property at a delinquent tax sale where it is afterwards found that the property purchased has been erroneously sold or the sale thereof is void. In cases where property sold as delinquent is bought by the county, and where the value of said property has become so uncertain as to make the collection of the taxes and other charges thereon doubtful, the county commissioners are authorized to compromise the taxes and other charges at a less amount than the full sum due, as in their judgment may be deemed wise.

Historical: Laws 1901, 233, Sec. 149;
amended Laws 1907, 344, Sec. 1. See
Rev. St. 1887, Sec. 1571.

ARTICLE 13.

APPORTIONMENT OF TAXES.

Section

1792. Apportionment of taxes.

1793. Same: Fines, licenses and poll taxes.

Section

1794. Collection of poor tax: Disposition.

Apportionment of Taxes.

Sec. 1792. All taxes levied and collected in each county shall be apportioned to the several funds for the year for which levied, including State ad valorem until the full amount levied by the State has been apportioned, State wagon road, current expense, general school, road, bridge and warrant redemption funds, and such special funds as may have been created for the payment of interest

on and redemption of county bonds. No current expense of any county for such year shall be paid out of any fund other than current expense, road and bridge, the funds of which may be ordered by the board of county commissioners to be transferred from one to the other, as circumstances may require, and proper debits and credits made to each fund from and to which transfer is made. All warrants payable out of such funds shall be paid out of the respective funds on which drawn, and charged in the aggregate against such fund, in the amount at any time returned redeemed. Each of the State funds, the bond fund, the general school and warrant redemption funds, shall be charged in like manner with all amounts properly chargeable against and paid out of such funds. Any excess of revenue in any funds, to pay the liabilities of the year against the same, shall (except in case of current expense fund, which, as provided by law, shall go to the warrant redemption fund) be credited to the revenues of the like fund for the succeeding year, until all liabilities which have been created against such fund are fully paid, satisfied and discharged, and thereupon any surplus of revenues therein shall be transferred to the warrant redemption fund, if there is such, otherwise to the current expense fund of the succeeding year.

Historical: Laws 1901, 233, Sec. 177.

Same: Fines, Licenses and Poll Taxes.

Sec. 1793. All revenues derived from fines imposed against county officers, the licenses of toll roads, bridges and ferries, and all poll taxes, other than road per capita tax, shall be apportioned to the current expense fund of the county for the year in which collected.

Historical: Laws 1901, 233, Sec. 178.
See Rev. St. 1887, Sec. 1619; amended
Laws 1899, 367, Sec. 1.

Collection of Poor Tax: Disposition.

Sec. 1794. The per capita and ad valorem tax, when levied by the board of county commissioners for the care and maintenance of the poor of the county, must be collected by the tax collector in the same manner and at the same time as other county taxes, and when collected must be paid into the "Current Expense Fund" of the county, and shall be drawn therefrom as other current expenses.

Historical: Laws 1901, 233, Sec. 180. See Rev. St. 1887, Sec. 2180; amended	Laws 1895, 101, Sec. 35; re-enacted Laws 1899, 254, Sec. 40.
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ARTICLE 14.

SETTLEMENTS WITH THE STATE.

Section	Section
1795. Settlements with State Auditor and Treasurer.	1800. Same: Disposition of report.
1796. Same: Quarterly settlements.	1801. Same: Liability for neglect.
1797. License statements.	1802. Duty of State Auditor.
1798. Same: Liability for neglect.	1803. County treasurer to file copy.
1799. Report by county auditor.	

Settlements With State Auditor and Treasurer.

Sec. 1795. The treasurers of the respective counties must, at any time upon the order of the State Auditor and the Treasurer of the

State, settle with the State Auditor, and pay over to the Treasurer all moneys in their possession belonging to the State. Whenever there is in the hands of any county treasurer the sum of one hundred dollars to the credit of the State of Idaho, in any fund or funds, except State school land fund, such treasurer shall forthwith pay over in cash, to the State Treasurer, the full amount in his hands to the credit of the State, without expense to the State for the transmission thereof, which expense shall be paid by the county, and therewith furnish to the State Auditor a statement showing on what accounts such payment is made, and the amount to each: *Provided*, That prior to making such payment such treasurer shall ascertain from the county auditor the amount owing to the State by the county of which he is such officer; and if he has on hand to the credit of the State, in any fund, an amount greater than is required to satisfy the claims of the State on that account, he shall retain the balance in such fund, and if it be in the State ad valorem tax fund, shall forthwith transfer the same to the warrant redemption fund of the county, or if there is no such fund, then to the current expense fund of the year in which such revenue was derived, or if such fund is balanced, then to the next succeeding year in which there are outstanding warrants unpaid, notifying the auditor of such transfer. Any county treasurer who fails to comply with the provisions hereof, shall be liable to the State for the interest, at the rate of seven per cent per annum, on such sum or sums as are herein required to be paid over to the State Treasurer from the date at which such payment should have been made, as provided herein, to the date of the payment of the same, which interest may be collected by an action on the official bond of the treasurer so failing, on one or more causes of action.

Historical: Laws 1901, 233, Sec. 155.
See Rev. St. 1887, Sec. 1670.

California Legislation: Similar:

through first sentence, rest omitted:
Pol. Code 1872, Sec. 3865; Deering's
Code, ib.; Kerr's Code, ib.

Same: Quarterly Settlements.

Sec. 1796. The treasurers of the several counties respectively must, between the first and fifteenth days of January, April, July and October of each year, make out and transmit by mail, express or other safe conveyance, a statement to the State Auditor, State Land Board and State Treasurer, and settle in full with the State Auditor, and pay over in cash, without expense to the State, to the State Treasurer, all funds which have come into their hands as county treasurers before the close of business at the end of the previous month, and belonging to the State, certifying particularly from what source derived.

Historical: Laws 1901, 233, Sec. 156;
amended Laws 1905, 128, Sec. 1. See
Rev. St. 1887, Sec. 1671.

California Legislation: See Pol.

Code 1872, Sec. 3866; as amended:
Deering's Code, ib.; further amended:
Kerr's Code, ib.

License Statements.

Sec. 1797. Each county treasurer must, at the time of making his settlement with the State Auditor, produce to him statements of

transactions had in State and county licenses since the last settlement, which statement must be made by the county auditor, according to forms which are furnished by the State Auditor for that purpose.

Historical: Laws 1901, 233, Sec. 157.
See Rev. St. 1887, Sec. 1672.

Same: Liability for Neglect.

Sec. 1798. Every county treasurer, who neglects or refuses to transmit such statement to the State Auditor and Treasurer at the time specified in this article, and to settle and make payment as required herein, is liable on his official bond.

Historical: Laws 1901, 233, Sec. 158.
See Rev. St. 1887, Sec. 1674.

Report by County Auditor.

Sec. 1799. The auditor of each county, between the first and fifteenth days of each month in which the treasurer of his county is required to settle with the State Auditor, must make in duplicate and verify by his affidavit a report to the State Auditor showing specifically the amount due the State from each particular source of revenue at the close of business on the last day of the preceding month.

Historical: Laws 1901, 233, Sec. 159.
Rev. St. 1887, Sec. 1675.

California Legislation: Similar:

Pol. Code 1872, Sec. 3868; as amended:
Deering's Code, ib.; as amended:
Kerr's Code, ib.

Same: Disposition of Report.

Sec. 1800. The auditor must at once transmit by mail or express to the State Auditor one copy of the report, and must deliver the other to the treasurer of his county.

Historical: Laws 1901, 233, Sec. 160.
Rev. St. 1887, Sec. 1676.

California Legislation: Same except
"Controller" for "State Auditor" and

"copy" inserted after "other", line 3:
Pol. Code 1872, Sec. 3869; Deering's
Code, ib.; Kerr's Code, ib.

Same: Liability for Neglect.

Sec. 1801. Every auditor who fails to make and transmit the report required by the preceding section, or any report or statement required by this chapter, is liable on his official bond.

Historical: Laws 1901, 233, Sec. 161.
Rev. St. 1887, Sec. 1677.

California Legislation: See Pol.

Code 1872, Sec. 3870; Deering's Code,
ib.; as amended: Kerr's Code, ib.

Duty of State Auditor.

Sec. 1802. The State Auditor must, after the treasurer has made settlement and payment, enter upon each copy of the Auditor's report a statement showing the amount of money paid into the Treasury of the State by the county treasurer.

Historical: Laws 1901, 233, Sec. 162.
See Rev. St. 1887, Sec. 1680. "By the
county treasurer" transposed for
grammatical reasons.

California Legislation: See Pol.
Code 1872, Sec. 3873; Deering's Code,
ib.; as amended: Kerr's Code, ib.

County Treasurer to File Copy.

Sec. 1803. The county treasurer must file with the auditor of his county the copy returned to him by the State Auditor, and the auditor must then make the proper entries in his account with the treasurer.

Historical : Laws 1901, 233, Sec. 163. See Rev. St. 1887, Secs. 1681, 1682.	Code 1872, Sec. 3874; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: See Pol.	

ARTICLE 15.

ASSESSMENT AND COLLECTION OF CITY AND SCHOOL DISTRICT TAXES.

Section	Section
1804. Assessor to assess and collect taxes.	1806. Premium for collection.
1805. Delinquency of city and school taxes.	1807. Assessor to give bond.

Assessor to Assess and Collect Taxes.

Sec. 1804. The county assessor shall assess all property in, and shall collect all general and special taxes levied in and for, all cities, towns and villages in his county, incorporated under the provisions of Title 13 of this Code and all general laws of the State of Idaho; also for all independent school districts in his county organized under general laws of the State, and for all cities and independent school districts in his county, organized under the special laws of, or charters granted by, this State, when any such special law or charter has been so amended by the Legislature of the State of Idaho, as to authorize such cities and independent school districts to collect revenue under the provisions of this chapter, at the same time that assessments for State and county taxes are made by him; and he is authorized and empowered to do and perform all acts in relation to the assessment and collection of such taxes as is provided herein for the assessment and collection of such taxes for State and county purposes. He shall list the property in such cities, towns, villages and independent school districts, and the valuation thereof, so that the properties in such cities, towns, villages and independent school districts, and the valuation thereof, can be separately shown.

Historical: Laws 1901, 233, Sec. 6; amended Laws 1905, 4, Sec. 1. "Title 13 of this Code" inserted for "the act of the Third session of the Legislature of the State of Idaho." The act re-	ferred to is found in Title 13. It was, however, passed at the second and not the third session of the State Legislature.
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Delinquency of City and School Taxes.

Sec. 1805. All the general and special taxes of such cities, towns, villages and independent school districts, levied and assessed under the laws of this State and duly certified by the officers thereof to the assessor, shall become due and delinquent at the time that State and county taxes so become; and such taxes shall attach to and become a lien on the real property assessed as do State and county taxes. All the provisions of this chapter governing and in aid of assessment and collection of State and county taxes, are hereby made applicable to the assessment and collection of all general and special taxes in such cities, towns, villages and independent school districts.

Historical: Laws 1901, 233, Sec. 7;
amended Laws 1905, 4, Sec. 2.

Premium for Collection.

Sec. 1806. All such cities, towns, villages and independent school districts shall pay to the county in which said city, town, village and independent school district is situated, one and one-half per cent of the amount of such city and independent school district taxes collected, and such payment shall be in full for such services and compensation of all county officers in assessing, collecting, equalizing and paying over said city and independent school district taxes.

Historical: Laws 1901, 233, Sec. 8.

Assessor to Give Bond.

Sec. 1807. Every assessor shall furnish bond to each city, town, village or independent school district within his county authorized by law to collect revenue under the provisions of this chapter, in such amount as shall be fixed by the board of county commissioners for the protection of such city, town, village or independent school district.

Historical: Laws 1901, 233, Sec. 9.

ARTICLE 16.

GENERAL DUTIES AND LIABILITIES OF OFFICERS IN RELATION TO REVENUE.

Section	Section
1808. Officers to perform their own duties.	1818. Neglect of collector: Liability.
1809. General duties of assessor.	1819. Same: Action to enforce liability.
1810. Supplies for assessor.	1820. County attorney to sue for taxes.
1811. Assessor to procure abstract of all public lands.	1821. Same: Evidence.
1812. Assessor to procure plat book.	1822. Annual settlements of revenue officers.
1813. Uncollected taxes: Liability of assessor.	1823. Neglect of officers: Removal from office.
1814. Property escaping taxation: Liability of assessor.	1824. Books open to inspection.
1815. Wilful neglect of assessor: Liability.	1825. State Auditor may examine books.
1816. Same: County attorney to bring suit.	1826. Prosecution of delinquent officials.
1817. Settlements of tax collector with county auditor.	1827. Same: Employment of counsel.

Officers to Perform Their Own Duties.

Sec. 1808. The treasurer, tax collector, assessor, auditor, clerk of the board of equalization, and each member of the board, must separately perform the duties required of him in his office, and must not, except in cases provided by law, perform the duties required of any other officer under this chapter.

Historical: Laws 1901, 233, Sec. 175.
See Rev. St. 1887, Sec. 1709.

California Legislation: Similar:
Pol. Code 1872, Sec. 3890; Deering's

Code, ib.; Kerr's Code, ib.

Cross Reference: Performing duties of two officers—penalty: Sec. 6392.

General Duties of Assessor.

Sec. 1809. The assessor must perform all the duties required and

imposed by law in the assessment of all property for taxation; he is ex-officio tax collector, and is authorized and required to receive and collect all per capita or poll taxes, and all taxes assessed upon real and personal property, as provided by law, and he has the power provided by law to enforce the collection and payment of all such taxes. In addition to the duties of such assessor heretofore prescribed by law, he shall assess and collect all taxes levied by cities, towns, villages and independent school districts authorized by law to collect revenue under the provisions of this chapter.

Historical: Laws 1901, 233, Sec. 179.
See Rev. St. 1887, Sec. 2040.

Supplies for Assessor.

Sec. 1810. There must be allowed to the assessor and collector, by the board of county commissioners, postage stamps in the amount of twenty-five dollars, and necessary blank books, blanks and stationery for the use of his office in each year, not otherwise in this chapter provided for.

Historical: Laws 1901, 233, Sec. 30.

Assessor to Procure Abstract of All Public Lands.

Sec. 1811. The assessor shall provide himself each year with an abstract of all lands in his county upon which final proof has been made in any United States land office; and also of all lands purchased from the State; which abstract of State lands shall show the amount paid upon each such purchase, and the land to which the State has given its deed. The assessor shall pay for the same and shall be entitled to have his bill therefor audited and allowed to him as a necessary expense of his office.

Historical: Laws 1901, 233, Sec. 150.

Assessor to Procure Plat Book.

Sec. 1812. The assessor must have prepared and platted a full, accurate and complete plat book of his county, in which shall be platted all townships and fractional townships therein which have been officially surveyed and platted by the United States Government, such plats to be made in a draftsmanlike manner on a scale of four inches to the mile. All lands in the county for which the United States has issued its patent shall be platted thereon in such a manner as to correspond with the technical description of such lands as described by the government survey thereof; and on each of such tracts shall be entered the name of the patentee thereof, together with the name of the present owner. In all cases where any portion of such township has been subdivided into lots and blocks for townsite purposes, a plat of such townsite shall be prepared according to the official subdivisions thereof, if it has been so subdivided, and upon each subdivision shall be entered the name of the present owner, and, if a government townsite, then also the name of the person to whom the first deed for each subdivision thereof was issued. Thereafter when any deed of transfer is presented to the assessor which in any wise affects any original ownership as shown by such plat, it shall be his duty to change such plat as may be necessary to show

such change of title, and to enter the name of the present owner thereon; and thereupon to stamp any such deed so presented with the following words, "Presented to and platted by me," and sign the same, for which there shall be no charge. All necessary and reasonable expense incurred by the assessor in complying with the provisions of this section, shall be audited and allowed by the county commissioners as a necessary expense of such office.

Historical: Laws 1901, 233, Sec. 151.
Omitting the phrase "within one year after this act shall have become a law."

Cross Reference: Assessor to execute plat for purpose of assessment: Sec. 2312.

Uncollected Taxes: Liability of Assessor.

Sec. 1813. The assessor shall be liable to the county, on his official bond and upon any bond given by him under the provisions of this chapter, to be recovered by an action thereon, for the amount of the taxes on real and personal property assessed by him and not collected as provided by law; also for all taxes on property within his county which, through his wilful failure or neglect, is unassessed, and the county attorney must, as soon as any liability hereunder attaches, commence an action on the assessor's bond for the amount of taxes lost from either or both such causes. On the trial of such action the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

Historical: Laws 1901, 233, Sec. 185.
See Rev. St. 1887, Secs. 1457, 1458, 1459.

California Legislation: See Pol. Code 1872, Sec. 3660; Deering's Code, ib.; Kerr's Code, ib.

Property Escaping Taxation: Liability of Assessor.

Sec. 1814. If any property shall ultimately escape taxation for any year, and such fact shall be made known to the board of county commissioners before the final settlement and payment of salary due to any assessor during whose administration such property was not assessed, it shall be the duty of the board to deduct from any amount then due or to become due such assessor, as salary or otherwise, the amount of taxes on the property not assessed: *Provided, however,* That the assessor shall be subrogated to the lien of the State and county for such taxes, and may reimburse himself for the amount of such taxes, by enforcing such lien in a proper action, or may have a personal action for the recovery of the same with costs of such suit.

Historical: Laws 1901, 233, Sec. 61.
California Legislation: See Pol. Code 1872, Secs. 3660, 3661 and 3662;

Deering's Code, ib.; as amended: Kerr's Code, ib.

Wilful Neglect of Assessor: Liability.

Sec. 1815. If any assessor shall wilfully or knowingly list, or assess, or shall suffer to be listed, or assessed, or returned upon the assessment roll of his county, any property, real or personal, at an amount of value less than its fair cash valuation, he shall be and is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than three hundred dollars for each offense. One-half of any such fine collected shall be paid to the person or persons in-

forming against and prosecuting such violation of the law, and the other one-half shall be paid into the county treasury for the use of the general school fund of the county where such conviction is had.

Historical: Laws 1901, 233, Sec. 62.

Same: County Attorney to Bring Suit.

Sec. 1816. It is hereby made the duty of the county attorney of each county, upon information of any taxpayer in his county, corroborated by one reputable witness, to prosecute all violations of the preceding section, and if he shall fail or refuse to prosecute such violations of the law upon such information, he is hereby declared to be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, nor more than three hundred dollars. Seventy-five per cent of any fine collected shall be paid to the person or persons who inform against and carry on such prosecution, and twenty-five per cent thereof shall be paid to the county treasury for the use of the general school fund of the county where such conviction is had. Any attorney who may be employed in the conduct of such prosecution is hereby vested with all the powers of the county attorney for the county for the purpose of such prosecution.

Historical: Laws 1901, 233, Sec. 63.

Settlements of Tax Collector With County Auditor.

Sec. 1817. On the first Monday in each month the tax collector must settle with the county auditor and clerk of any city, town, village and independent school district, authorized by law to collect revenue in the manner provided for in this chapter, for all moneys collected for the State and county, or for such city, town, village and independent school district, and pay the same to the respective treasurers of such counties, cities, towns, villages and independent school districts, taking their duplicate receipts therefor; and on the same day must deliver to and file in the office of the auditor the receipts of such treasurers, and a statement under oath, showing an account of all his transactions and receipts since his last settlement, and that all money collected by him as tax collector has been paid.

Historical: Laws 1901, 233, Sec. 100.
See Rev. St. 1887, Sec. 1520.

Pol. Code 1872, Sec. 3753; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Similar:

Neglect of Collector: Liability.

Sec. 1818. A tax collector refusing or neglecting for a period of five days to make the payments and settlements required in this chapter is liable for the full amount of taxes charged upon the assessment roll.

Historical: Laws 1901, 233, Sec. 101.
Rev. St. 1887, Sec. 1521.

Code 1872, Sec. 3754; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Same: Action to Enforce Liability.

Sec. 1819. The county attorney must bring suit against the tax collector and his sureties for such amount, and in case of neglect, the

board of commissioners may require him to do so; and when the suit is commenced, no credit or allowance must be made to the tax collector for the taxes outstanding.

Historical: Laws 1901, 233, Sec. 102.
See Rev. St. 1887, Sec. 1522.

Pol. Code 1872, Sec. 3755; Deering's
Code, ib.; Kerr's Code, ib.

California Legislation: Similar:

County Attorney to Sue for Taxes.

Sec. 1820. When the owner of any assessed personal property, the taxes upon which are not a lien upon real property, has removed, concealed or disposed of, or threatens or is about to remove, conceal or dispose of such property, or any part thereof, before the taxes levied thereon have been paid, or do, or suffer or cause to be done any act to prevent the seizure thereof by the tax collector, or when from any cause beyond his control, but not a failure to collect at the time when assessed, the tax collector is unable to collect the taxes upon any assessed personal property, the county attorney must, upon written notice from the tax collector, commence, in the name of the county, a personal action against such owner in the county where the assessment was made, for taxes and the percentage, interest and costs, and in any action the provisional remedies of arrest and bail and of attachment may be issued against such owner and his property.

Historical: Laws 1901, 233, Sec. 153.
Rev. St. 1887, Sec. 1575.

Same: Evidence.

Sec. 1821. On the trial a certified copy of the assessment, signed by the auditor of the county where the same was made, with the affidavit of the collector thereto attached, that the taxes have not been paid, describing it on the assessment book or delinquent list, is prima facie evidence that such tax and the per centum is due, and entitled him to judgment, unless the defendant proves the tax is paid.

Historical: Laws 1901, 233, Sec. 154.
Rev. St. 1887, Sec. 1576.

Annual Settlements of Revenue Officers.

Sec. 1822. Every assessor and tax collector, county attorney and county attorney must annually, on the first Tuesday after the first Monday of January, make a settlement with the county auditor and with the clerks of all cities, towns, villages and independent school districts authorized by law to collect revenues as provided by this chapter in his county, of all transactions connected with the revenue for the previous year, and thereafter the auditor shall not issue any certificate for the payment of any money to the treasurer by the tax collector on account of the revenues of such year, until after the date when the tax collector is authorized by law to collect delinquent taxes; and on revenues reported collected after such time the penalty of ten per cent, on account of delinquency, shall be reported at the same time and included in the regular reports of the assessor to the auditor and officers named therein concerning the collection of revenue.

Historical: Laws 1901, 233, Sec. 174.
See Rev. St. 1887, Sec. 1708.

Code 1872, Sec. 3889; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

Neglect of Officers: Removal From Office.

Sec. 1823. Whenever an assessor, collector, auditor, treasurer, or any other officer upon whom any duties devolve under this chapter, or under any other revenue act of this State, wilfully neglects or refuses to perform any such duties, or performs them in a careless or incompetent manner, he may be removed from office in the manner prescribed by law, and when proceedings are commenced to remove such officer from his office, the board of commissioners (in case such officer be a commissioner, then the probate judge) may suspend such assessor, collector, auditor, treasurer or other officer from his powers and duties under this chapter, and under any other revenue act, and appoint a competent person in his place, until the proper tribunal has either removed or acquitted such suspended officer. An act concerning the revenue or assessment, or the collection of taxes or sale of property for non-payment of taxes, performed by any such temporary officer, is as valid and of the same force and effect as if performed by the suspended officer: *Provided*, That such appointee has first qualified and given such bond with sureties for the faithful performance of the duties of his office, as is required of persons elected thereto.

Historical: Laws 1901, 233, Sec. 172.
Rev. St. 1887, Sec. 1706.

Books Open to Inspection.

Sec. 1824. The books, papers and accounts of each officer relating to the assessment or collection of taxes, or the receiving, auditing or disbursing of moneys collected for the use or benefit of the State, or of any county, must at all times during office hours, when not necessarily in use by the officers, be open for any person whomsoever to inspect or copy, without any fee or charge.

Historical: Laws 1901, 233, Sec. 176.
Rev. St. 1887, Sec. 1711.

State Auditor May Examine Books.

Sec. 1825. The State Auditor, or any person authorized by him, may examine the books of any officer charged with the collection and receipt of State taxes and revenues.

Historical: Laws 1901, 233, Sec. 164.
See Rev. St. 1887, Sec. 1683.

Code 1872, Sec. 3877; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: See Pol.

Prosecution of Delinquent Officials.

Sec. 1826. If he believes any officer has been guilty of defrauding the State revenues, or has neglected or refused to perform any duty relating to the revenue, he must direct the county attorney or other counsel to prosecute the delinquent.

Historical: Laws 1901, 233, Sec. 165.
Rev. St. 1887, Sec. 1684.

Code 1872, Sec. 3878; Deering's Code, ib.; as amended: Kerr's Code, ib.

California Legislation: Similar: Pol.

Same: Employment of Counsel.

Sec. 1827. The State Auditor or Attorney General may employ other counsel than the county attorney, and the expenses must be paid out of the State Treasury.

Historical: Laws 1901, 233, Sec. 166. See Rev. St. 1887, Sec. 1685.

California Legislation: See Pol. Code 1872, Sec. 3880; Deering's Code, ib.; Kerr's Code, ib.

Appropriation Necessary: The last

clause of this section, "and the expenses must be paid out of the Territorial Treasury," does not make an appropriation for the payment of services rendered. *Kingsbury v. Anderson* (1898) 5 Ida. 771; 51 Pac. 744.

CHAPTER 2. LICENSE TAXES.

Section

- 1828. Licenses to be prepared and printed.
- 1829. Licenses to be transmitted to treasurer.
- 1830. Forms for county licenses.
- 1831. Delivery of licenses to tax collector.
- 1832. Auditor to keep license account.
- 1833. Treasurer to report to State Auditor.
- 1834. License to be procured before commencing business.

Section

- 1835. Suits for recovery of license tax.
- 1836. Same: Production of licenses.
- 1837. Monthly settlements for licenses: Application of license moneys.
- 1838. Fees for licenses.
- 1839. Auctioneer's license.
- 1840. Bridge and ferry license.
- 1841. Exhibitions, pawnbrokers and billiard halls.

Note: Liquor licenses: Secs. 1506 et seq.; peddlers' licenses: Secs. 1528 et seq.

Licenses to Be Prepared and Printed.

Sec. 1828. The State Auditor must prepare and have printed blank licenses of all classes mentioned in this chapter for terms of three, six and twelve months, and for such shorter terms as are herein authorized to be issued, with a blank receipt attached for the signature of the tax collector when sold.

Historical: Rev. St. 1887, Sec. 1630. See 8 Ter. Ses. (1875) 475, Sec. 81.

California Legislation: Same except "each county auditor" for "the State Auditor", line 1: Pol. Code 1872, Sec.

3356; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Legislature may impose license taxes on persons and corporations: Const. Art. 7, Sec. 2.

Licenses to Be Transmitted to Treasurer.

Sec. 1829. The State Auditor, after signing, numbering and classifying the same, must transmit as many as may be required to the treasurer of each county and charge him therewith. The treasurer must countersign the same and deliver them to the county auditor, taking his receipt therefor, and charge him therewith, giving in the entry the number, classes and amounts thereof.

Historical: Rev. St. 1887, Sec. 1631. See 8 Ter. Ses. (1875) 475, Sec. 81.

Forms for County Licenses.

Sec. 1830. The county auditor must furnish printed forms (similar to those furnished by the State Auditor) for all licenses, the entire proceeds of which are paid into the county treasury, and each

license must be first numbered by the county treasurer, and by said treasurer charged to the auditor in a book kept for that purpose.

Historical: Rev. St. 1887, Sec. 1632.
8 Ter. Ses. (1875) 475, Sec. 53.

Delivery of Licenses to Tax Collector.

Sec. 1831. The county auditor must affix his official seal to, and sign, all licenses, and from time to time deliver them to the tax collector in such quantity as may be required, taking his receipt therefor and charging him therewith, giving in the entry the numbers, classes and amounts thereof.

Historical: Rev. St. 1887, Sec. 1663.
8 Ter. Ses. (1875) 475, Sec. 82.

California Legislation: Same except

“number” inserted before “and sign”,
line 1; Pol. Code 1872, Sec. 3357;
Deering’s Code, ib.; Kerr’s Code, ib.

Auditor to Keep License Account.

Sec. 1832. The auditor must keep in his office the stumps of all licenses by him delivered to the tax collector, and a ledger in which he must keep the collector’s account for all licenses delivered to him, sold or returned unsold by him. A correct statement of the collector’s license account must be certified to the county treasurer each month by the auditor.

Historical: Rev. St. 1887, Sec. 1634.

California Legislation: Same: Pol.

Code 1872, Sec. 3358; Deering’s Code,
ib.; Kerr’s Code, ib.

Treasurer to Report to State Auditor.

Sec. 1833. On the first business day of January, April, July and October, respectively, of each year, or within ten days thereafter, each county treasurer must report to the State Auditor, the number of licenses issued by the tax collector or officer charged with the duty of issuing the same, the amount of money paid for the same, and the number and description of licenses on hand, and the State Auditor must hold each county treasurer or other county officer responsible for all licenses issued to him under this chapter, not accounted for or returned at the settlement required by this title to be made on the first Tuesday after the first Monday of January of each year.

Historical: Rev. St. 1887, Sec. 1635.
See 8 Ter. Ses. (1875) 475, Sec. 87.

Cross Reference: Settlement on

first Tuesday after first Monday of
January: Sec. 1822.

License to Be Procured Before Commencing Business.

Sec. 1834. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the tax collector of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city or particular locality in the county to transact the business described in such license. Separate licenses must be obtained for each branch, establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person in

addition to the license provided by this chapter, also procures the license required by the ordinances or orders of such city or town.

Historical: Rev. St. 1887, Sec. 1636.
See 8 Ter. Ses. (1875) 475, Sec. 84.

California Legislation: Same: Pol.
Code 1872, Sec. 3359; Deering's Code,
ib.; Kerr's Code, ib.

Cited: Vermont Loan Co. v. Hoff-
man (1897) 5 Ida. 376; 49 Pac. 314.

Suits for Recovery of License Tax.

Sec. 1835. Against any person required to take out a license who fails, neglects or refuses to take out such license, or who carries on, or attempts to carry on, business without such license, the collector may direct suit in the name of the State of Idaho as plaintiff, to be brought for the recovery of the license tax, and in such case either the collector or prosecuting attorney may make the necessary affidavit for a writ of attachment, which may issue without any bonds being given on behalf of the plaintiff. In case of a recovery by the plaintiff, twenty dollars damages must be included in the judgment and costs to be collected from the defendant, and when collected five dollars thereof must be paid to the collector and fifteen dollars to the prosecuting attorney prosecuting the suit.

Historical: Rev. St. 1887, Sec. 1637.
See 8 Ter. Ses. (1875) 475, Sec. 84.

California Legislation: Similar: Pol.

Code 1872, Sec. 3360; Deering's Code,
ib.; Kerr's Code, ib.

Same: Production of License.

Sec. 1836. Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs.

Historical: Rev. St. 1887, Sec. 1639.
See 8 Ter. Ses. (1875) 475, Sec. 84.

California Legislation: Same: Pol.
Code 1872, Sec. 3362; Deering's Code,
ib.; Kerr's Code, ib.

Cited: Bingham Co. v. Fidelity &
Deposit Co. (1907) 13 Ida.; 88
Pac. 829.

Monthly Settlement for Licenses: Application of License Moneys.

Sec. 1837. On the first Monday in each month the collector must return to the auditor all licenses unsold and be credited therewith, and must, with the auditor, appear at the treasurer's office and pay into the county treasury all moneys collected for licenses sold during the preceding month, take the treasurer's receipt therefor and file a duplicate thereof with the auditor. The auditor must credit the collector and charge the treasurer therewith.

Fifty per cent of all moneys paid for licenses shall be applied to and constitute a part of the school fund of the school district in which said licenses are collected, forty per cent to the general road fund of the county in which said licenses are collected, and ten per cent shall be paid into the State Treasury: *Provided*, That forty per cent of all moneys paid for licenses by applicants within incorporated towns, cities and villages, or cities acting under special charters, shall be paid by the county treasurer to the municipal authori-

ties of such town, city or village, for general revenue purposes of such town, city or village; fifty per cent of said moneys so paid for licenses are to be applied and constitute a part of the school fund of the school district in which said licenses are collected, and ten per cent shall be paid into the State Treasury. The collector shall file with the treasurer a statement or report each quarter showing the amount of licenses collected in each school district, incorporated town, city or village, or city acting under special charter.

Historical: Rev. St. 1887, Sec. 1640; amended Laws 1895, 37, Sec. 1; re-enacted Laws 1899, 242, Sec. 1.

California Legislation: Similar through first paragraph, rest omitted:

Pol. Code 1872, Sec. 3363; Deering's Code, ib.; Kerr's Code, ib.

Cited: Steunenberg v. Storer (1898) 6 Ida. 44; 52 Pac. 14.

Fees for Licenses.

Sec. 1838. For each license issued the collector must collect a fee of one dollar, which must be equally divided between the auditor and collector.

Historical: Rev. St. 1887, Sec. 1641. See 8 Ter. Ses. (1875) 475, Sec. 75.

California Legislation: Similar: Pol.

Code 1872, Sec. 3364; as amended: Deering's Code, ib.; Kerr's Code, ib.

Auctioneer's License.

Sec. 1839. Every auctioneer must obtain a license from the tax collector and must pay therefor five dollars per month: *Provided*, That upon the payment of twenty dollars in advance an auctioneer may obtain from the tax collector an annual license, which annual license shall date from the first day of March of each and every year.

Historical: Rev. St. 1887, Sec. 1642; amended Laws 1899, 377, Sec. 1.

Bridge and Ferry License.

Sec. 1840. Licenses to take tolls on bridges or ferries are fixed annually by the commissioners. The licenses therein provided for are issued by the county auditor, and must be obtained from the tax collector of the county.

Historical: Rev. St. 1887, Sec. 1643. See 8 Ter. Ses. (1875) 866, Sec. 5.

California Legislation: Similar: Pol. Code, 1872, Sec. 3378; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Bridge and ferry licenses: See Tit. 7, Ch. 4 (Secs. 1013 et seq).

Exhibitions, Pawnbrokers and Billiard Halls.

Sec. 1841. Licenses must be obtained for the purposes hereinafter named, for which the tax collector must require the payment as follows:

1. For each exhibition for pay of a caravan or menagerie, or any collection of animals, circus, equestrian or other acrobatic performance, ten dollars; and for each show for pay of any figures, jugglers, necromancers, magicians, wire or rope dancing, or sleight of hand exhibition, five dollars each day;

2. From each pawnbroker, fifty dollars per quarter;

3. From each proprietor or keeper of a billiard, pool or bagatelle table, or any other kind of a table on which games are played with

ball and cue, for each table five dollars per quarter, and for a bowling alley five dollars per quarter for each alley; but no license must be granted for a term less than three months.

Historical: Rev. St. 1887, Sec. 1645. (See 8 Ter. Ses. (1875) 475, Sec. 72;) amended Laws 1903, 104, Sec. 1. The opening paragraph was omitted from the amendatory act, but is found in the Revised Statutes and is inserted to make the section complete.

California Legislation: Similar

with additional provisions: Pol. Code 1872, Sec. 3380; as amended: Deering's Code, ib.; Kerr's Code, ib.

Constitutionality: This section as amended by the Laws of 1903, is held constitutional. State v. Jones (1904) 9 Ida. 693; 75 Pac. 819.

CHAPTER 3.
POLL TAXES.

- Section
- 1842. Persons subject to poll tax.
 - 1843. Poll tax receipts: Charge to collector: Amount.
 - 1844. Return of two dollar receipts to auditor.
 - 1845. Signature by treasurer and auditor.
 - 1846. Issuance of receipts to collector.
 - 1847. Official receipts must be used.
 - 1848. Poll tax a lien on realty: Seizure of personalty.
 - 1849. Sale of personalty.
 - 1850. Procurement of names from employers.
 - 1851. Same: Liability of employer.
 - 1852. Same: Deduction of poll tax from indebtedness.

- Section
- 1853. Delivery of receipt to purchaser at sale.
 - 1854. Receipt as evidence of payment.
 - 1855. Monthly settlements with auditor.
 - 1856. Same: Disposition of receipts not used.
 - 1857. Credit to auditor.
 - 1858. Poll tax book.
 - 1859. Liability of collector for poll taxes.
 - 1860. Return of two dollar and fifty cent receipts.
 - 1861. Erasure of names on book.
 - 1862. Apportionment of poll tax money.

Note: For prior poll tax laws, see Rev. St. 1887, Secs. 1600-1619; Laws 1888-89, 7.

Persons Subject to Poll Tax.

Sec. 1842. Every male inhabitant of this State, over twenty-one and under fifty years of age, except paupers, insane persons, Indians not taxed, government pensioners, active members of volunteer fire companies, regularly enrolled as such, and persons premanently disabled so as not to be able to perform manual labor, and honorably discharged soldiers in the volunteer service of the United States, must annually pay a poll tax of two dollars, if paid on or before the second Monday in January, and after that date two dollars and fifty cents.

Historical: Laws 1901, 298, Sec. 1.
California Legislation: See Pol. Code 1872, Sec. 3839; as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Legislature may authorize a per capita tax: Const. Art. 7, Sec. 2.

Poll Tax Receipts: Charge to Collector: Amount.

Sec. 1843. Upon delivering poll tax receipts to the tax collector as provided in this chapter, the auditor must charge the same to him, and take his receipt therefor. All such receipts delivered to the tax collector before the second Monday of January must be for the sum of two dollars each, and he must charge that sum for each, and all such receipts delivered to the tax collector after the second Mon-

day of January in each year must be for the sum of two dollars and fifty cents each, and he must be charged that sum for each.

Historical: Laws 1901, 298, Sec. 2.

Return of Two Dollar Receipts to Auditor.

Sec. 1844. On the first Tuesday after the first Monday in January the tax collector must return to the auditor all the two dollar poll tax receipts received by him and not used, and make full settlement with the auditor therefor, and pay to the treasurer the total amount collected and not before paid in, and file the treasurer's receipt therefor with the auditor.

Historical: Laws 1901, 298, Sec. 3.

Signature by Treasurer and Auditor.

Sec. 1845. The auditor of each county shall cause a sufficient number of poll tax blank receipts, and delinquent poll tax receipts, consecutively numbered from one, in each series, having the year for which issued printed in red skeleton letters as large as convenient thereon, the delinquent poll tax receipts being plainly distinguished as such; and said auditor must cause a number thereof equal to the probable number of inhabitants in each county liable to pay poll tax, to be immediately forwarded to the county treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose; and thereupon deliver them to the county auditor, who must likewise sign them and make an entry of the number he received in a book to be kept by him for that purpose.

Historical: Laws 1901, 298, Sec. 4.

Issuance of Receipts to Collector.

Sec. 1846. The county auditor must from time to time issue to the tax collector so many of the receipts for poll tax as he may need, taking his receipt therefor.

Historical: Laws 1901, 298, Sec. 5.

Official Receipts Must Be Used.

Sec. 1847. No receipt for poll tax other than those mentioned in this chapter, must be used or given for the payment of any such tax.

Historical: Laws 1901, 298, Sec. 6.

Poll Tax a Lien on Realty: Seizure of Personalty.

Sec. 1848. The poll tax is a lien upon the real property assessed to the person liable therefor, and such property shall be sold at tax sale therefor, as other taxes, and at the same time and in connection therewith; but when such person is not assessed for real property, the tax collector may collect his poll tax at any time. The tax collector must demand payment of poll tax of every person liable therefor, and on the neglect or refusal of any person, who is not assessed for real property, to pay the same, he must collect it by seizure and sale of any personal property owned by such person.

Historical: Laws 1901, 298, Sec. 7.

California Legislation: See Pol.

Code 1872, Sec. 3860; as amended:
Deering's Code, ib.; Kerr's Code, ib.

Sale of Personalty.

Sec. 1849. The sale may be made after three hours' verbal notice of time and place, and the provisions of the revenue law relating to seizure and sale of personal property for taxes thereon are applicable thereto.

Historical: Laws 1901, 298, Sec. 8.

Cross Reference: Seizure and sale of personal property: Secs. 1777-1783.

Procurement of Names From Employers.

Sec. 1850. The tax collector may demand of any employer, or from the superintendent or foreman of any mine or reduction works, or any agent of a corporation, the names of all persons in his employ, or employed in such mine or works or by any such corporation.

Historical: Laws 1901, 298, Sec. 9.

Same: Liability of Employer.

Sec. 1851. Every person, company or corporation indebted to one who neglects or refuses, after demand, to pay a poll tax for which he is liable, becomes liable therefor; and must pay the same after service upon him, or upon any member or agent of such company, or agent of such corporation, by the collector, of a notice in writing stating the name of any such delinquent.

Historical: Laws 1901, 298, Sec. 10.

Same: Deduction of Poll Tax From Indebtedness.

Sec. 1852. Every person, company or corporation paying the poll tax of another, may deduct the same from any indebtedness to such person.

Historical: Laws 1901, 298, Sec. 11.

California Legislation: Similar: Pol.

Code 1872, Sec. 3850; Deering's Code, ib.; Kerr's Code, ib.

Delivery of Receipt to Purchaser at Sale.

Sec. 1853. The tax collector must deliver the poll tax receipt, filled out with the name of the person owing the taxes attached to the tax certificate, to the purchaser of property at any sale for delinquent taxes; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

Historical: Laws 1901, 298, Sec. 12.

California Legislation: Similar: Pol.

Code 1872, Sec. 3851; Deering's Code, ib.; Kerr's Code, ib.

Receipt as Evidence of Payment.

Sec. 1854. The receipt so delivered is the only evidence of payment.

Historical: Laws 1901, 298, Sec. 13.

California Legislation: Same: Pol.

Code 1872, Sec. 3852; Deering's Code, ib.; Kerr's Code, ib.

Monthly Settlements With Auditor.

Sec. 1855. On the first Monday in each month the collector must make an oath, before the auditor, of the total amount of poll taxes collected by him during the last preceding month, and must at the

same time settle with the auditor for the same, and pay into the county treasurer's office the total amount of poll taxes collected, and file the treasurer's receipt therfor with the auditor.

Historical: Laws 1901, 298, Sec. 14.
California Legislation: Similar: Pol.

Code 1872, Sec. 3853; Deering's Code, ib.; Kerr's Code, ib.

Same: Disposition of Receipts Not Used.

Sec. 1856. The auditor must, as soon as either settlement is made, return to the treasurer the receipts not used.

Historical: Laws 1901, 298, Sec. 15.
California Legislation: Same except "the" for "either": Pol. Code 1872,

Sec. 3855; Deering's Code, ib.; Kerr's Code, ib.

Credit to Auditor.

Sec. 1857. The treasurer must credit the auditor with the receipts so returned, and thereupon seal them up securely and mark the year and number of receipts, and class thereon, and file the same.

Historical: Laws 1901, 298, Sec. 16.
California Legislation: Similar: Pol.

Code 1872, Sec. 3856; Deering's Code, ib.; Kerr's Code, ib.

Poll Tax Book.

Sec. 1858. It is the duty of the assessor of each county, during the month of January next succeeding any general election, to copy into a book furnished him by the board of county commissioners of his county, to be known as the "Poll Tax Book", the name of every person on the registrar's "Register of Qualified Electors," subject to payment of a poll tax. The names must be alphabetically arranged according to the first letter of the family name, and said book must be kept in his office as a public record. Such officer must, from time to time, add to the lists in said book, under the proper letter, the names of any residents of his county, or of any persons who may have become residents of said county, or who may attain their majority, who are subject to the payment of a poll tax. And any resident of the county may require such officer to insert in said book, under the proper letter, any omitted name of any resident of said county who is subject to the payment of a poll tax, and for the wilful omission from the proper place in said book, of the name of any resident of his county subject to the payment of a poll tax, such officer forfeits to the school fund of his county the sum of twenty-five dollars for each name so wilfully omitted, to be recovered in an action on his official bond by the county superintendent of public instruction.

Historical: Laws 1901, 298, Sec. 17.

Liability of Collector for Poll Taxes.

Sec. 1859. Such officer must, at the regular meeting of the board of county commissioners on the second Monday in September in each year, produce his poll tax book to the board, and he must be charged with one poll tax for every name in said book, and can only be discharged by showing that he has collected the tax of every person named in said book, or that those from whom he has failed to collect

such poll tax have died, removed from the county, or become exempt, or that, for some other sufficient reason, the tax in such case could not be collected; and every poll tax from which he is not thus discharged by the board, he must collect before the day on which he is required herein to return to the auditor all poll tax receipts, or be finally charged therewith: *Provided*, That the delivery of the poll tax receipt of any person whose property has been sold for taxes to the county, attached to the tax certificate therefor, shall be deemed a collection of such poll tax; and the board must cause action to be brought upon the official bond of such officer for the amount of such final charge, together with the amount of any other poll taxes he has wilfully failed to collect; and in any such action, proof that the name of any delinquent is on his poll tax book, and that he was not discharged from the collection of the tax from such delinquent by the commissioners, or that any resident of the county had given him the name of any delinquent as that of any person subject to the payment of such tax, is prima facie evidence of such wilful neglect by the officer and can only be rebutted by proof that the tax is paid, or that the alleged delinquent is exempt or not subject to poll tax in the county, or that it could not be collected by the means afforded by law.

Historical: Laws 1901, 298, Sec. 18.

Return of Two Dollar and Fifty Cent Receipts.

Sec. 1860. On the day upon which the assessor is required by law to file the tax certificates for property sold for delinquent taxes, and to turn over the delinquent tax roll to the auditor, he must return to the auditor all of the two dollar and fifty cent poll tax receipts received by him and not used, and make final settlement therefor, and pay the treasurer all poll tax money not before paid in, and file the treasurer's receipt therefor with the auditor; and thereupon the auditor must return such delinquent poll tax receipts to the treasurer, who must credit the auditor with the same and file the same in the manner required for two dollar poll tax receipts.

Historical: Laws 1901, 298, Sec. 19.

Erasure of Names on Book.

Sec. 1861. No name once entered on said poll tax book must be erased therefrom except by the direction of the board of county commissioners, on the ground that the party is not subject to the tax; and any name once placed on a poll tax book must be carried to the new books successively to be prepared after each general election unless so directed to be omitted.

Historical: Laws 1901, 298, Sec. 20.

Apportionment of Poll Tax Money.

Sec. 1862. All money collected as poll taxes under the provisions of this chapter, must be paid into the county treasury, and shall be apportioned to the "current expense" fund of the county in which collected.

Historical: Laws 1901, 298, Sec. 21.

CHAPTER 4.

TAXATION OF PROFITS OF MINES.

Section	Section
1863. Valuation of mines for taxation.	1868. Examination of books: Penalty for false statement.
1864. Net profits defined.	1869. Assessment without statement.
1865. Statement of net profits.	1870. Assessment book.
1866. Statement as to entire group.	1871. General duties of officers.
1867. False statements constitute perjury.	1872. Collection of tax.

Valuation of Mines for Taxation.

Sec. 1863. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral or metal deposits, after purchase thereof, from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of said mine or mining claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof so used for other than mining purposes, shall be taxed at its value for such other purposes, and all machinery used in mining, and all property and surface improvements upon mines or mining claims, which have a value separate and independent of such mines or mining claims, and the net annual proceeds of all mines and mining claims shall be taxed: *Provided*, That nothing in this chapter contained must be construed so as to exempt from taxation improvements, buildings, erections, structures or machinery placed upon any mining claim, or used in connection therewith.

Historical: Laws 1903, 4, Sec. 1.
The proviso is the last sentence of Sec. 8 (Sec. 1868 post).

Net Profits Defined.

Sec. 1864. The term "net profits," as employed in this chapter, means the amount of money received from the mining of said metals or minerals from said mine or mining claim, after the deduction of the actual expenditure of money and labor in and about extracting the metals and minerals from the mine or mining claim, and transporting the same to the mill, concentrator or reduction works, and the reduction thereof, and the conversion of the same into money, or its equivalent, and also the deduction of all moneys expended for necessary labor, machinery and supplies needed and used in the mining operations, for the improvements necessary in and about the mine or mining claim, for reducing ores, for the construction of the mills and reduction works used and operated in connection with the mine or mining claim, for transporting the ore, and for extracting the metals and minerals therefrom; but the money invested in the mine, or improvements made during any year except the year immediately preceding such statement, must not be included therein. Such expenditures do not include the salaries, or any portion thereof, of any person or officers not actually engaged in the working of the mine, or personally superintending the management thereof.

Historical: Laws 1903, 4, Sec. 4.

Statement of Net Profits.

Sec. 1865. Every person, corporation or association, engaged in mining upon any quartz vein or lode, or placer mining claim, containing gold, silver, copper, lead, coal or other precious and valuable minerals or metals, or mineral or metal deposits, must between the first day of January and the first day of May in each year, make out a statement of the net profits derived from the mining of said metals or minerals, from each mine or mining claim owned or worked by such person, or from each group of mines or mining claims worked by a common system of development, during the year preceding the first day of January. Such statement must be verified by the oath of such person, or superintendent or managing agent of such corporation or association, who must deliver the same to the assessor of the county in which such mines are situated.

Historical: Laws 1903, 4, Sec. 2.

Statement as to Entire Group.

Sec. 1866. Where the same person or company or association is operating two or more mining claims under one general system of mining or development, the product of which group of mines is mingled and treated as one mining operation, the statement of the owner provided herein to be made, and the assessment provided herein to be made by the assessor, shall be made as to such entire group, and need not be made as to each particular mining claim constituting said group.

Historical: Laws 1903, 4, Sec. 5.

False Statements Constitute Perjury.

Sec. 1867. If any one herein required to make a statement, shall knowingly and wilfully swear to any false statement contained therein, then such person shall be guilty of perjury, and shall be prosecuted and punished as provided for in other cases of perjury.

Historical: Laws 1903, 4, Sec. 10.

Cross Reference: Punishment for perjury: Sec. 6486.

Examination of Books: Penalty for False Statement.

Sec. 1868. The assessor, after such statement has been rendered, shall have the right to examine the books and accounts of any person, corporation or association engaged in mining as mentioned in this chapter, in order to verify the statement made by such person, corporation or association, and if from such examination he finds such statement false, he must assess the net proceeds in the same manner as if no statement had been made and delivered, by making an estimate from the best sources within his reach, and if satisfied that the false statement was intentionally so made, he shall add as a penalty therefor, to the amount of the net proceeds so found, fifty per cent thereof, which amount thus increased shall constitute the sum upon which the taxes must be levied and collected, and such assessment shall be binding, effectual and lawful, and the value so fixed by the assessor shall not be reduced by the county board of equalization.

All information derived from any examination of the books and accounts made pursuant to this chapter by the assessor, or any one acting for him or representing him, shall be deemed to be and held as confidential communications not to be communicated to any other person by the person making such examination, or any one to whom the knowledge of such examination or facts therein disclosed shall come, except when it becomes necessary as a part of the performance of the public duty of such person to disclose the same in any proceeding affecting the validity of said assessment or taxation, or for the prosecution for perjury of the person required to make the statement mentioned in this chapter. Any person or officer making such disclosure or violating such confidence, except as herein provided, shall be deemed guilty of a felony, and upon conviction thereof shall be removed from office and punished as in case of other felonies.

Historical: Laws 1903, 4, Sec. 8. Omitting the last sentence, which is added as a proviso to Sec. 1863.

Cross Reference: Punishment for felony: Sec. 6312.

Assessment Without Statement.

Sec. 1869. If any person, corporation or association, engaged in mining as mentioned in this chapter, refuses or neglects to make and deliver to the assessor of the county where the mines are located, the statement mentioned in this chapter, such assessor must list the property and assess, according to his knowledge and information, the amount of said tax in the manner provided by the law for the assessment of other property where no statement is furnished.

Historical: Laws 1903, 4, Sec. 7.

Assessment Book.

Sec. 1870. The assessor must prepare at the time of the preparation of the general assessment book, another assessment book called the "Assessment Book of the Net Profits of Mines," alphabetically arranged, in which must be listed the net profits of all the mines in his county, and in which must be specified in separate columns and under appropriate heads:

1. The name of the owner or owners of the mines;
2. The name, description and location of the mine;
3. The number of tons extracted during the year;
4. The gross yield or value in dollars and cents;
5. The actual cost of extracting the same from the mine;
6. The actual cost of transportation to the place of reduction or sale;
7. The actual cost of reduction or sale;
8. The cost of construction of betterments and repair of mines and reduction works during the year;
9. The net profits in dollars;
10. The total amount of taxes.

Historical: Laws 1903, 4, Sec. 3.

General Duties of Officers.

Sec. 1871. The duties of the assessor, county auditor, State Board of Equalization and the county board of equalization, as to the assessment of the net profits of mines, the statements and returns to be

made, the equalization thereof, and other official acts, are the same as those provided by the laws of this State for the assessment of other property.

Historical: Laws 1903, 4, Sec. 6.

Collection of Tax.

Sec. 1872. The tax mentioned in the preceding sections must be collected, and payment thereof enforced, as the collection and enforcement of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ores or minerals are extracted, which lien attaches on the second Monday of January of each year, and the sale thereof for delinquent taxes may be made as provided for the sale of real estate for delinquent taxes.

Historical: Laws 1903, 4, Sec. 9.

CHAPTER 5.

TRANSFER TAX ON SUCCESSIONS, LEGACIES AND DEVISES.

Section	Section
1873. Transfer subject to tax.	1886. Appraisement of transfer.
1874. Appointment deemed a taxable transfer.	1887. Acceptance of bribe by appraiser.
1875. Rate of tax.	1888. Jurisdiction over estate of non-resident.
1876. Same.	1889. Definitions.
1877. Exemptions.	1890. Collection of delinquent tax.
1878. Tax on future and contingent estates.	1891. Same: County attorney to institute proceedings.
1879. Tax on devise to executor.	1892. Record of estates: Entries: Report of probate judge.
1880. Time of payment: Extension: Interest.	1893. Expenses of collecting tax.
1881. Collection of tax by administrator.	1894. Settlements and reports of county treasurer.
1882. Sale of property to pay tax.	1895. Receipts for taxes paid.
1883. Payment of tax by administrator.	1896. Failure of officers to perform duties.
1884. Refund of excess tax.	1897. Suits to enforce collection and to quiet title against tax.
1885. Collection of tax from non-resident administrator.	

Transfers Subject to Tax.

Sec. 1873. All property which shall pass, by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as hereinafter directed for the benefit of the general fund of this State, to be used for all the purposes for which said fund is available. And the county

treasurer shall, upon the receipt of said tax, pay the same to the State Treasurer and take duplicate receipts thereof, one of which the county treasurer shall retain, and transmit the other to the State Auditor, and receive from him credit for the amount thereof on his account; and such tax shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed, and only upon the excess over the exemptions hereinafter granted.

Historical: Laws 1907, 558, Sec. 1.

California Legislation: Similar:
Henning's Gen. Laws, 138, Sec. 1.

Appointment Deemed a Taxable Transfer.

Sec. 1874. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Historical: Laws 1907, 558, Sec. 2.

California Legislation: Same: Henning's Gen. Laws, 138, Sec. 1.

Rate of Tax.

Sec. 1875. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

1. Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent, or any child adopted as such in conformity with the laws of this State, or any child to whom such decedent, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent: *Provided, however,* Such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

2. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister, or a descendant of a brother or sister, of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

3. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

4. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the decedent, at the rate of four per centum of the clear value of such interest in such property.

5. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

Historical: Laws 1907, 558, Sec. 3.

California Legislation: Same: Henning's Gen. Laws, 139, Sec. 2.

Same.

Sec. 1876. The foregoing rates in the preceding section are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

1. Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, one and one-half times the primary rates;

2. Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates;

3. Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates;

4. Upon all in excess of five hundred thousand dollars, three times the primary rates.

Historical: Laws 1907, 558, Sec. 4.

California Legislation: Similar: Henning's Gen. Laws, 139, Sec. 3...

Exemptions.

Sec. 1877. The following exemptions from the tax are hereby allowed:

1. All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation, or to any public corporations, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason

whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt;

2. Property of the clear value of ten thousand dollars transferred to the widow or to a minor child of the decedent, and of four thousand dollars transferred to each of the other persons described in the first subdivision of Section 1875 shall be exempt;

3. Property of the clear value of two thousand dollars transferred to each of the persons described in the second subdivision of Section 1875 shall be exempt:

4. Property of the clear value of one thousand five hundred dollars transferred to each of the persons described in the third subdivision of Section 1875 shall be exempt;

5. Property of the clear value of one thousand dollars transferred to each of the persons described in the fourth subdivision of Section 1875 shall be exempt;

6. Property of the clear value of five hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of Section 1875 shall be exempt.

Historical: Laws 1907, 558, Sec. 5.

California Legislation: Similar:
Henning's Gen. Laws, 140, Sec. 4.

Tax on Future and Contingent Estates.

Sec. 1878. When any grant, gift, legacy or succession upon which a tax is imposed by Section 1873 shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in Section 1886, the tax prescribed by this chapter shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: *Provided*, That the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the people of the State of Idaho, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said probate court may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county recorder of the proper county: *Provided, further*, That such person shall make a full and verified return of such property to said court, and file the same in the office of the county recorder within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years.

Historical: Laws 1907, 558, Sec. 6.

California Legislation: Similar:
Henning's Gen. Laws, 140, Sec. 5.

Tax on Devise or Executor.

Sec. 1879. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the probate court in which the probate proceedings are pending shall fix the compensation.

Historical: Laws 1907, 558, Sec. 7.

California Legislation: Similar:
Henning's Gen. Laws, 141, Sec. 6.

Time of Payment: Extension: Interest.

Sec. 1880. All taxes imposed by this chapter, except as hereinafter provided, shall be due and payable at the death of the person rendering such property subject to such taxation, and interest at the same rate as is now provided by law for delinquent taxes shall be charged and collected thereon for such time as said tax is not paid: *Provided*, That if said tax is paid within one year from the accruing thereof, no interest shall be charged or collected thereon, and if said tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted from said tax: *Provided, further*, That if, by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of the decedent or any part thereof cannot be settled up at the end of the year from his or her decease, the probate court, or the judge thereof, may make necessary extensions of time for the payment of such taxes, but no single extension shall exceed one year, and in such cases only six per centum per annum shall be charged upon the said tax from the death of the decedent to the expiration of the period for which the extension of time was granted, after which interest at the same rate as is now provided by law for delinquent taxes shall be charged; and in all such cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid, and the executors, administrators or trustees shall give a bond to the people of the State of Idaho, in a penalty of three times the amount of the said tax, with such sureties as the probate judge of the proper county may approve, conditioned for the payment of said tax and interest thereon at the expiration of such period, which bond shall be filed in the office of said probate judge.

Historical: Laws 1907, 558, Sec. 8.

California Legislation: See Henning's Gen. Laws 141, Sec. 7.

Collection of Tax by Administrator.

Sec. 1881. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be

not money, he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon, or payable out of, real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the probate court to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Historical: Laws 1907, 558, Sec. 9.

California Legislation: Similar:
Henning's Gen. Laws, 141, Sec. 9.

Sale of Property to Pay Tax.

Sec. 1882. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

Historical: Laws 1907, 558, Sec. 10.

California Legislation: Same: Henning's Gen. Laws, 142, Sec. 10.

Payment of Tax by Administrator.

Sec. 1883. Every sum of money retained by an executor, administrator or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately send to the State Auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said Auditor shall seal said receipt with the seal of his office, and countersign the same, and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credit in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless he shall produce a receipt so sealed and countersigned by the State Auditor, or a copy thereof, certified by him, and file the same with the court.

Historical: Laws 1907, 558, Sec. 11.

California Legislation: Similar:
Henning's Gen. Laws, 142, Sec. 11.

Refund of Excess Tax.

Sec. 1884. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property

from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or to the State Auditor, or by them, if it has been so paid.

Historical: Laws 1907, 558, Sec. 12.

California Legislation: Similar:
Henning's Gen. Laws, 142, Sec. 12.

Collection of Tax From Non-Resident Administrator.

Sec. 1885. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or under control securities, deposits or other assets of a decedent, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the county treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets of the estate of a non-resident decedent including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and penalty which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this chapter, unless the county treasurer consents thereto in writing. And it shall be lawful for the said county treasurer, personally, or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice and to allow such examination, and to retain a sufficient portion or amount to pay such tax and penalty as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to the payment of two times the amount of the tax and penalty due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer; and the payment as herein provided shall be enforced in an action brought in accordance with the provisions of Section 1891 of this chapter.

Historical: Laws 1907, 558, Sec. 13.

California Legislation: Similar:
Henning's Gen. Laws, 142, Sec. 13.

Appraisement of Transfer.

Sec. 1886. When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the probate court in which the probate proceedings are pending, on the application of any interested party, or upon its own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice, by mail, to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the market value of all inheritances, devises, bequests or other interests, and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this chapter, be determined by the rule, method and standard of morality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the county treasurer out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account, and on the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

Historical: Laws 1907, 558, Sec. 14.

California Legislation: Similar:
Henning's Gen. Laws, 143, Sec. 14.

Acceptance of Bribe by Appraiser.

Sec. 1887. Any appraiser appointed by virtue of this chapter, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars nor more than five hundred dollars, or by imprisonment in the county

jail ninety days, or by both such fine and imprisonment, and in addition thereto the court shall dismiss him from such service.

Historical: Laws 1907, 558, Sec. 15.
Phraseology of last half slightly changed to correctly express the meaning.

California Legislation: Similar: Henning's Gen. Laws, 144, Sec. 15.

Jurisdiction Over Estate of Non-Resident.

Sec. 1888. The probate court in the county in which is situate the real property of a decedent who was not a resident of the State, or if there be no real property, then in the county in which any of the personal property of such non-resident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter, except as hereinafter provided, and the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

Historical: Laws 1907, 558, Sec. 16.

California Legislation: Similar:
Henning's Gen. Laws, 144, Sec. 16.

Definitions.

Sec. 1889. The words "estate" and "property" as used in this chapter, shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the State. The word "transfer" as used in this chapter, shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent" as used in this chapter, shall include the testator, intestate, grantor, bargainor, vendor, or donor.

Historical: Laws 1907, 558, Sec. 24.

California Legislation: Same: Henning's Gen. Laws, 146, Sec. 28.

Collection of Delinquent Tax.

Sec. 1890. If it shall appear to the probate court, or judge thereof, that any tax accruing under this chapter has not been paid according to law, it shall issue a citation, citing the persons known to own any interest in or part of the property liable to the tax, or any person or corporation liable under the law for the payment of said tax, to appear before the court on a day certain, not more than ten weeks after the date of such citation, and show cause why said tax should not be paid. The service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, and the enforcement of the determination or decree, shall conform as near as may be to the provisions now established by the laws of this State in similar proceedings in the probate courts; and the clerk of the court shall, upon the request of the county attorney or treasurer of the county, furnish, without fee, one or more transcripts of

such decree, and the same shall be docketed and filed by the county recorder of any county in the State, without fee, in the same manner and with the same effect as provided by Section 4460 of these Codes for filing a transcript of an original docket.

Historical: Laws 1907, 558, Sec. 17. "Of these Codes" for "Rev. St. 1887"—the sections are the same.

California Legislation: Similar: Henning's Gen. Laws, 144, Sec. 17.

Cross Reference: Citations from and hearings in probate court: Secs. 5658-5670.

Same: County Attorney to Institute Proceedings.

Sec. 1891. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this chapter, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the probate court, as provided in the preceding section for the enforcement and collection of such tax.

Historical Laws 1907, 558, Sec. 18. "The preceding section" inserted for "Section 18." The reference to Section 18 was an error and it is probable that the preceding section was intended as the proceeding provided

for in Sec. 1897 is brought in the District Court.

California Legislation: Similar: Henning's Gen. Laws, 144, Sec. 18.

Record of Estates: Entries: Report of Probate Judge.

Sec. 1892. The Secretary of State shall furnish to each probate judge a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application has been made to the probate court for the issuance of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence, and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The probate judge shall also enter in such book the amount of personal property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraiser appointed by the court under this chapter, and the value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will or otherwise, as fixed by the probate court, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this chapter filed with him. The probate judge shall, on the first day of January, April, July and October of each year, make a report, in duplicate, upon forms to be furnished by the State Auditor, containing all the data and matters required to be entered in such book, and also of the property from which, or the party from whom, he has reason to believe the tax under this chapter is due and unpaid, one of which

shall be immediately delivered to the county treasurer and the other transmitted to the State Auditor.

Historical: Laws 1907, 558, Sec. 19.

California Legislation: Similar:
Henning's Gen. Laws, 144, Sec. 19.

Expenses of Collecting Tax.

Sec. 1893. Whenever the probate court of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in Section 1890, the State Treasurer shall pay, or allow, to the treasurer of any county, all expenses incurred for service of citation, and his other lawful disbursements that have not otherwise been paid.

Historical: Laws 1907, 558, Sec. 20.
"Section 1890" inserted for "Section
18 of this act": See note to Sec. 1891.

California Legislation: Similar:
Henning's Gen. Laws, 145, Sec. 20.

Settlements and Reports of County Treasurer.

Sec. 1894. The treasurer of each county shall collect and pay to the State Treasurer all taxes that may be due and payable under this chapter, who shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the State Auditor, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the State Auditor may prescribe; and for all such taxes collected by him and not paid to the State Treasurer by the first day of June and January of each year, he shall pay interest at the rate of ten per centum per annum.

Historical: Laws 1907, 558, Sec. 21.

California Legislation: Similar:
Henning's Gen. Laws, 145, Sec. 21.

Receipts for Taxes Paid.

Sec. 1895. Any person, or body politic or corporate, shall, upon payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or a copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this chapter, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the recorder's office in the county in which said property is situated, in a book to be kept by said recorder for such purpose, which shall be labeled "Inheritance Tax."

Historical: Laws 1907, 558, Sec. 22.

California Legislation: Similar:
Henning's Gen. Laws, 146, Sec. 24.

Failure of Officers to Perform Duties.

Sec. 1896. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this chapter, or who fails or refuses to make and deliver, within a reasonable time, any statement or record required by this chapter, shall forfeit to the State of Idaho, the sum of one thousand dollars,

to be recovered in an action brought by the Attorney General in the name of the people of the State, on the relation of the State Auditor.

Historical: Laws 1907, 558, Sec. 23.

California Legislation: Similar:
Henning's Gen. Laws, 146, Sec. 26.

Suits to Enforce Collection, and to Quiet Title Against Tax.

Sec. 1897. In all cases where any tax has become or shall hereafter become a lien upon any property under or by virtue of any of the provisions of this chapter, the county attorney of the county in which the estate of the decedent mentioned in this chapter is being administered or has been administered in probate proceedings, may, whenever any property of said estate has been distributed without the payment to the State of all or any part of the taxes payable on account thereof under this chapter, bring and prosecute an action or actions in the name of the State as plaintiff, for the purpose of enforcing such lien or liens, against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was derived through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lineor or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the State for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this chapter, or for the purpose of having it determined that any property is not subject to any lien for taxes under this chapter. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of such decedent, and any assignee, grantee or successor in interest of any such persons, and all or any other persons who might be made parties defendant in any action brought by the State under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this section enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the District Court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of liens.

(c) Service of summons in the actions brought against the State shall be made on the Secretary of State and on the county attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said county attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this chapter, shall be governed by the provisions of the Code of Civil procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials, and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

Historical: Laws 1907, 558, Sec. 25.

California Legislation: Similar:
Henning's Gen. Laws, 146, Sec. 29.

TITLE 11

COUNTIES AND COUNTY OFFICERS

Chapter

1. Counties as bodies corporate.
2. The board of county commissioners.
3. County officers.

Chapter

4. Salaries and fees of office.
5. Other county charges.
6. The county poor.

CHAPTER 1.

COUNTIES AS BODIES CORPORATE.

Section

1898. Every county a body corporate.
1899. Exercise of powers.
1900. Corporate name.
1901. Enumeration of powers.

Section

1902. Counties not to loan credit.
1903. Payment of judgments against county.

Every County a Body Corporate.

Sec. 1898. Every county is a body politic and corporate, and as such has the powers specified in this title or in other statutes, and such powers as are necessarily implied from those expressed.

Historical: Rev. St. 1887, Sec. 1730.
See 6 Ter. Ses. (1871) 76, Sec. 1.

California Legislation: Same except "code" for "title" and "in special stat-

utes" for "in other statutes", line 2:
Pol. Code 1872, Sec. 4000; Deering's Code, ib.; Kerr's Code, ib.

Exercise of Powers.

Sec. 1899. Its powers can only be exercised by the Board of County Commissioners, or by agents and officers acting under their authority, or authority of law.

Historical: Rev. St. 1887, Sec. 1731.

California Legislation: Same except "supervisors" for "county commissioners", line 2: Pol. Code 1872, Sec.

4001; additional provisions as amended: Deering's Code, ib.; Kerr's Code, ib.

Corporate Name.

Sec. 1900. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

Historical: Rev. St. 1887, Sec. 1732.

California Legislation: Same: Pol. Code 1872, Sec. 4002; Deering's Code, ib.; Kerr's Code, ib.

Actions on Bond: An action on a

bond in which a county is the party in interest for whose benefit the action is brought, should be brought in the name of the county. U. S. v. Shoup (1889) 2 Ida. 493; 21 Pac. 656.

Enumeration of Powers.

Sec. 1901. It has power:

1. To sue and be sued;
2. To purchase and hold lands within its limits;

- 3. To make such contracts, and purchase and hold such personal property, as may be necessary to the exercise of its powers;
- 4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;
- 5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.

Historical: Rev. St. 1887, Sec. 1733.
See 6 Ter. Ses. (1871) 76, Sec. 1.

California Legislation: Same except "by this code or by special statutes" for "by law", last words: Pol. Code 1872, Sec. 4003; Deering's Code, ib.; Kerr's Code, ib.

enforce local police regulations: Const. Art. 12, Sec. 2. Shall not become stockholders in corporations: Const. Art. 12, Sec. 4.

Cited: U. S. v. Shoup (1889) 2 Ida. 193; 21 Pac. 656; State v. Ada Co. (1900) 7 Ida. 261; 62 Pac. 457.

Cross Reference: May make and

Counties Not to Loan Credit.

Sec. 1902. No county must in any manner loan or give its credit to or in aid of any person, association, or corporation unless it is expressly authorized by law so to do.

Historical: Rev. St. 1887, Sec. 1734.

California Legislation: Same except "association, or corporation", omitted line 2: Pol. Code 1872, Sec. 4004 Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Counties not to loan credit: Const. Art. 12, Sec. 4.

Payment of Judgments Against County.

Sec. 1903. Upon presentation to the board of county commissioners of a final judgment for money or damages, duly certified, against their county, the board must allow the same and direct its payment as other claims against the county are paid.

Historical: Rev. St. 1887, Sec. 1735.
See 6 Ter. Ses. (1871) 76, Sec. 4.

CHAPTER 2.
THE BOARD OF COUNTY COMMISSIONERS.

Article	Article
1. Constitution, meetings and records.	4. Payment of bounties.
2. Powers and duties.	5. County finances and claims against county.
3. Erection of public buildings.	6. County bond issues.

ARTICLE 1.
CONSTITUTION, MEETINGS AND RECORDS.

Section	Section
1904. Constitution of board.	1910. Clerk of board.
1905. District from which elected.	1911. Duties of Clerk.
1906. Term of office.	1912. Books to be kept.
1907. Division of county into districts.	1913. Regular meetings.
1908. Election of chairman.	1914. Adjourned meetings.
1909. Quorum: Temporary chairman: Administering oaths.	1915. Special meetings.
	1916. Meetings and records public.

Constitution of Board.

Sec. 1904. Each county must have a board of county commissioners consisting of three members.

Historical: Rev. St. 1887, Sec. 1745. See 5 Ter. Ses. (1869) 100, Sec. 1.

California Legislation: Similar but "supervisors" for "commissioners": Pol. Code 1872, Sec. 4022; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Constitution and term of office: Const. Art. 18, Sec. 10. When to take oath: Sec. 271. Vacancies, how filled: Secs. 321, 322.

District From Which Elected.

Sec. 1905. Each member of a board of commissioners must be an elector of the district he represents.

Historical: Rev. St. 1887, Sec. 1746. See 13 Ter. Ses. (1885) 85, Sec. 3.

California Legislation: Same except "supervisors" for "commissioners": Pol. Code 1872, Sec. 4023; Deering's Code, ib.; Kerr's Code, ib.

Election of Commissioners: Commissioners, while electors respectively of the districts which they represent, are elected by the voters of the whole county. *Cunningham v. George* (1892) 3 Ida. 456; 31 Pac. 809.

Term of Office.

Sec. 1906. The term of office of a commissioner is two years.

Historical: Rev. St. 1887, Sec. 1747. See 5 Ter. Ses. (1869) 100, Sec. 2.

California Legislation: Same except "Supervisor" for "commissioner" and

"three" for "two": Pol. Code 1872, Sec. 4024; repealed 1881.

Cited: *Castle v. Bannock Co.* (1901) 8 Ida. 124; 67 Pac. 35.

Division of County Into Districts.

Sec. 1907. At the regular meeting in July, preceding any general election, the board of commissioners must district their county into three districts, as nearly equal in population as may be, to be known as county commissioners' districts, numbers 1, 2 and 3, respectively; but in making such districts, no voting precinct shall be divided: *Provided*, That when a new county shall have been created, or the boundary lines of a county shall have been changed, then the board of commissioners of such county may district their county at any general or special meeting of such board.

Historical: Rev. St. 1887, Sec. 1748; amended Laws 1893, 3, Sec. 1; re-enacted Laws 1899, 164, Sec. 1.

Not Repealed: This section is still

in force notwithstanding the election law of 1891. *Cunningham v. George* (1892) 3 Ida. 456; 31 Pac. 809.

Election of Chairman.

Sec. 1908. The members of the board of commissioners must, at their first regular meeting on the second Monday of January next after their election, elect a chairman from their number.

Historical: Rev. St. 1887, Sec. 1750. See 5 Ter. Ses. (1869) 100, Sec. 6.

California Legislation: Different:

Pol. Code 1872, Sec. 4027; repealed 1881.

Quorum: Temporary Chairman: Administering Oaths.

Sec. 1909. A majority of the board constitutes a quorum. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board or its clerk may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties.

Historical: Rev. St. 1887, Sec. 1751.
See 5 Ter. Ses. (1869) 100, Sec. 6.
California Legislation: Same except

first sentence and “or its clerk”, line 5, omitted: Pol. Code 1872, Sec. 4028; Deering’s Code, ib.; Kerr’s Code, ib.

Clerk of Board.

Sec. 1910. The county auditor is ex-officio clerk of the board of commissioners. The records must be signed by the chairman and the clerk.

Historical: Rev. St. 1887, Sec. 1752.
See 5 Ter. Ses. (1869) 100, Sec. 6.
California Legislation: Different:

Pol. Code 1872, Sec. 4029; Deering’s Code, ib.; Kerr’s Code, ib.

Duties of Clerk.

- Sec. 1911.** The clerk of the board must:
1. Record all the proceedings of the board;
 2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against, the county;
 3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
 4. Sign all orders made and warrants issued by order of the board for the payment of money;
 5. Record the reports of the county treasurer of the receipts and disbursements of the county;
 6. Preserve and file all accounts acted upon by the board;
 7. Preserve and file all petitions and applications for franchises; and record the action of the board thereon;
 8. Record all orders levying taxes; and,
 9. Perform all other duties required by law or any rule or order of the board.

Historical: Rev. St. 1887, Sec. 1753.
See 5 Ter. Ses. (1869) 100, Sec. 6.
California Legislation: Same except additional provision in subd. 4: Pol. Code 1872, Sec. 4030; Deering’s Code, ib.; Kerr’s Code, ib.

trans: Sec. 354. To file oaths of registrars of election: Sec. 395.

Cross Reference: To keep record of highway proceedings: Sec. 877. To transmit notices of election to regis-

Necessity of Record: Under the statute requiring the proceedings of the board of county commissioners to be recorded, anything not so recorded is no part of the proceedings. *Gorman v. Co. Commrs.* (1874) 1 Ida. 553.

Books to Be Kept.

- Sec. 1912.** The board must cause to be kept:
1. A “Minute Book” in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.
 2. An “Allowance Book”, in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering and indexing the same through each year;
 3. A “Road Book”, containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads, road districts, and overseers thereof, their reports and accounts;
 4. A “Franchise Book”, containing all franchises granted by

them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required;

5. A "Warrant Book", to be kept by the county auditor, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

Historical: Rev. St. 1887, Sec. 1754.

California Legislation: Same: Pol.

Code 1872, Sec. 4031; Deering's Code, ib.; Kerr's Code, ib.

Regular Meetings.

Sec. 1913. The regular meetings of the boards of commissioners must be held at their respective county seats on the second Mondays in January, April, July and October of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and for other purposes, as are prescribed by law or provided for by the board.

Historical: Rev. St. 1887, Sec. 1755.
See 12 Ter. Ses. (1883) 10, Sec. 1.

California Legislation: Different:
Pol. Code 1872, Sec. 4032; Deering's Code, ib.; as amended: Kerr's Code, ib.

Note: This and the two following sections are construed in *Gilbert v. Canyon County*, 94 Pac. 1027, reported too late to be regularly annotated in these Codes.

Adjourned Meetings.

Sec. 1914. Adjourned meetings may be provided for, fixed, and held for the transaction of business, by an order duly entered of record, in which must be specified the character of business to be transacted at such meetings, and none other than that specified must be transacted.

Historical: Rev. St. 1887, Sec. 1756.
See 5 Ter. Ses. (1869) 100, Sec. 4.

Special Meetings.

Sec. 1915. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board a special meeting may be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must, by the clerk, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

Historical: Rev. St. 1887, Sec. 1757.
5 Ter. Ses. (1869) 100, Sec. 5.

California Legislation: Same: Pol. Code 1872, Sec. 4034; Deering's Code, ib.; Kerr's Code, ib.

Sufficiency of Notice: A notice calling a special meeting of the commissioners for the purpose of raising funds to purchase a site for, and to erect, a court house, is sufficient to

authorize the board, at the meeting held pursuant to such notice, to submit to the electors of the county the question whether bonds should be issued for the purpose of purchasing a site for, and erecting, a court house and jail, where the court house and jail constitute one building. *Shoshone Co. v. Rollins* (1905) 11 Ida. 314; 82 Pac. 105.

Meetings and Records Public.

Sec. 1916. All meetings of the board must be public, and the books, records and accounts must be kept at the office of the clerk, open

at all times for public inspection, free of charge. The clerk of the board must give five days' public notice of all special or adjourned meetings, stating the business to be transacted, by posting three notices in conspicuous places, one of which shall be at the court house door.

Historical: Rev. St. 1887, Sec. 1758. See 5 Ter. Ses. (1869) 100, Secs. 8, 5.	through first sentence, rest omitted: Pol. Code 1872, Sec. 4035; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same	

ARTICLE 2.
POWERS AND DUTIES.

Section	Section
1917. Jurisdiction and powers in general.	1925. Same: Payment for alteration and repairs.
1918. Supplies for elections.	1926. Notice concerning camp fires.
1919. Subpoenas for witnesses.	1927. Control over wires crossing railroad tracks.
1920. Enforcement of attendance and testimony.	1928. Order to change wires.
1921. Fees need not be prepaid.	1929. Penalty for disobedience of order.
1922. Leave of absence to officers.	1930. Neglect of duty by commissioners.
1923. Appointment of fire guard.	
1924. Powers of fire guard.	

Jurisdiction and Powers in General.

Sec. 1917. The boards of commissioners in their respective counties have jurisdiction and power, under such limitations and restrictions as are prescribed by law.

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe keeping, management or disbursement of the public moneys and revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; approve the official bonds of county and precinct officers, and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

2. To divide the counties into precincts, school, road and other districts required by law, change the same and create others, as convenience requires.

3. To establish, abolish and change election precincts, and to appoint judges of elections, and canvass all election returns.

4. To lay out, maintain, control and manage public roads, turnpikes, ferries and bridges within the county, and levy such tax therefor as authorized by law.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars, and an ad valorem tax not exceeding one-fourth of one per cent, or either of such levies, when both are not required, on all persons subject to poll tax in the county and taxable property of the county.

6. To provide a farm in connection with the county hospital,

and make regulations for working the same, or for the maintenance of the inmates under a lease of the same.

7. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county; preserve, take care of, manage and control the county property, but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by them for that purpose, and no more than the appraised value must be paid therefor.

8. To sell at public auction at the court house door, after thirty days' previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, not necessary for its use, paying the proceeds into the county treasury for the use of the county.

9. To examine and audit the accounts of all officers having the care, management, collection or disbursement or moneys belonging to the county, or appropriated by law, or otherwise, for its use and benefit.

10. To examine, settle and allow all accounts legally chargeable against the county, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.

11. To levy such tax annually on the taxable property of the county as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding the amount authorized by law; and to levy such taxes as are required to be levied by special or local statutes.

12. To equalize the assessments.

13. To direct and control the prosecution and defense of all suits to which the county is a party in interest, and employ counsel to conduct the same, with or without the county attorney, as they may direct.

14. To insure the county buildings in the name of and for the benefit of the county.

15. To grant licenses and franchises, as provided by law, for constructing, keeping and taking tolls on roads, bridges and ferries, and fix the tolls and licenses.

16. To fix the compensation of all county officers not otherwise fixed by general or special law, and provide for the payment of the same.

17. To fill by appointment all vacancies that may occur in county or precinct offices, except in members of the county board.

18. To contract for the county printing, and provide books and stationery for county officers.

19. At the adjournment of each session of the board, to cause to be published such brief statement as will clearly give notice to the public of all its acts and proceedings, and, semi-annually, a statement of the financial condition of the county. Such statement, as well as all other public notices of proceedings of, or to be had before, the board, not otherwise specially provided for, must be published in some newspaper, printed and published in the county, as will be most likely to give notice thereof; and, when in a weekly paper,

it must be published in at least two issues thereof, or in at least five issues when the paper is published oftener than weekly; but when there is no newspaper published in the county, copies of such statement must be kept posted for at least twenty days in three public places in the county, one being in a conspicuous place at the court house door.

20. To make and enforce such rules and regulations for the government of their body, the preservation of order and the transaction of business as may be necessary.

21. To adopt a seal for their board;

22. To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

Historical: Rev. St. 1887, Sec. 1759. (See 5 Ter. Ses. (1869) 100, Sec. 9; 7 Ter. Ses. (1873) 56, Sec. 2); Subd. 19, amended Laws 1895, 50, Sec. 1; re-enacted Laws 1899, 248, Sec. 1. Last part of subd. 3 omitted to conform to Laws 1899, 33, Sec. 92, as construed in *Cunningham v. George*, 3 Ida. 456, 31 Pac. 809. See Code Sec. 448, Subd. 17: "Except in members of the county board" added on the authority of Laws 1899, 67, Secs. 4, 9. See Code Secs. 321, 322. Subd. 13: "County attorney" for "District Attorney".

California Legislation: Similar with additional provisions: Pol. Code 1872, Sec. 4046; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Additional duties and powers: May employ counsel when necessary: Const. Art. 18, Sec. 6. To assist the State Examiner: Sec. 178.

Suspension and removal of county treasurer for default reported by State Examiner: Sec. 188.

To approve bond of county superintendent: Sec. 585.

Constitute with the county physician the county board of health: Secs. 1095, 1109.

To appoint county physician: Sec. 1109.

To license employment agencies: Sec. 1443.

Duty in granting liquor licenses: Sec. 1508.

Duties as board of equalization: Secs. 1692-1701.

To contract for the printing of supplies for the assessor or to procure the same from the State Auditor: Sec. 1734.

May transfer money from one fund to another: Sec. 1792.

To make allowance for supplies to assessor: Sec. 1810.

May suspend officers for neglect of duty with relation to revenue: Sec. 1823.

Duties with respect to formation of drainage districts: Secs. 2445-2448.

Grant of permission to construct

electric power transmission lines: Sec. 2837.

May appropriate money to aid in defraying the expenses of county fairs: Sec. 3040.

To provide room for use of jury: Sec. 7900. Must make a jury list: Sec. 3947.

May require prisoners in county jails to work: Secs. 8541, 8542, 8542b; to inspect county jail: Sec. 8543; to determine compensation to be allowed sheriff for boarding prisoners: Sec. 8539.

Incorporation of villages: Sec. 2222; to cause resolution organizing village into city to be recorded: Sec. 2175; changing names of municipalities: Secs. 2281-2286; to pass order consolidating municipalities: Sec. 2299.

To levy livestock sanitary tax: Sec. 1205; to appoint stock inspectors: Sec. 1244. May create herd districts: Secs. 1302-1305.

To provide office for county superintendent: Sec. 587; to levy a school tax: Sec. 603; may create new school districts and change the boundaries of existing districts: Secs. 615-617; establishment of independent school districts: Sec. 651; appointment of first board of trustees: Sec. 653.

To establish and furnish election precincts and to appoint judges of election: Secs. 364-370; appointment of registrars of election: Sec. 393; publication of registration notices and furnishing supplies to registrars: Sec. 394; to furnish election supplies: Secs. 402, 403; to provide two sets of ballot boxes for certain election precincts: Sec. 445; canvass of returns in county seat elections: Sec. 475; canvass of election returns: Sec. 448.

Organization of good road districts: Sec. 1050; to apportion to good road districts all road and poll taxes levied or collected within the district: Sec. 1058.

To fill vacancies in county and precinct offices: Secs. 321-323.

To fix penalties of bonds of county and precinct officers when not fixed

by law: Sec. 284; to approve bonds of county and precinct officers: *Ib.*

Duties with respect to highways: Secs. 882, 882-a; may create and alter road districts: Sec. 883; to appoint road overseer in case of failure to elect: Sec. 884; to set apart funds for general road purpose: Sec. 887; to let contracts for repair of roads: Secs. 888, 890, 891; levy of road taxes: Secs. 894-901; duties with respect to laying out, altering and discontinuing highways: Secs. 916-935; duties with respect to construction and repair of bridges: Secs. 936-942; grant of authority to construct toll roads: Secs. 980-1002; licensing the construction of toll roads for traction engines: Secs. 1003-1006; license and supervision of ferries and toll bridges: Secs. 1013-1040; revocation of toll road, bridge, or ferry license: Sec. 1046; construction of bridges over ditches: Sec. 3310; to direct county attorney to sue delinquent road overseers: Sec. 915; leases of highways by commissioners: Secs. 964-979; to repair dams pursuant to orders of the District Court: Sec. 155; direction of expenditure of forest reserve fund apportioned to roads: Sec. 122.

Organization of irrigation districts: Secs. 2372-2377; to have access to books of irrigation district: Sec. 2395; consolidation of irrigation districts: Sec. 2438; audit and allowance of bills for services of watermasters: Sec. 3281; audit and allowance of bills of water commissioners: Sec. 3271; to put measuring devices and headgates in irrigation ditches where the owners fail to do so: Sec. 3282; appointment of commissioners to fix water rates: Sec. 2839; regulation of use of highways by company supplying water to cities: Sec. 2840; fixing water rates: Secs. 3294-3298.

To deduct amount of uncollected taxes from assessor's salary: Sec. 1814. Must not reduce assessment of concealed property: Sec. 1680; nor of assessments made against persons who refuse to furnish a statement: Sec. 1688. Levy of taxes: Secs. 1647, 1648. May cancel and refund taxes erroneously assessed: Sec. 1791. To furnish assessor with blanks for special school district taxes: Sec. 623. To furnish poll tax book: Sec. 1858; to charge assessor for each name on the book: Sec. 1859; and to supervise erasures: Sec. 1861.

Cited: *Jolly v. Latah Co.* (1897) 5 Ida. 301; 48 Pac. 1063; *Ball v. Bannock County* (1897) 5 Ida. 602; 51 Pac. 454. *Feltham v. Board of Commrs.* (1904) 10 Ida. 182; 77 Pac. 332.

Establishment of Precincts: This section taken in connection with Rev. St. Sec. 1813, providing for precinct

officers, and Sec. 11 of the Election Law of 1891, contemplates the establishment of two kinds of precincts by the board of commissioners, viz: election precincts and justices' precincts, which need not be co-terminus, but where the commissioners establish election precincts, and provide for the election of justices of the peace in such precincts, it will be deemed a sufficient compliance with the law, although they do not eo nomine describe such precincts as justices' precincts. *State ex rel Griffith v. Vineyard* (1903) 9 Ida. 134; 72 Pac. 824.

Under subds. 2 and 3 of this section, the board of county commissioners has power to establish justices' precincts in incorporated cities. *Johnston v. Savidge* (1905) 11 Ida. 204; 81 Pac. 616.

Employment of Counsel: The board of county commissioners has no authority to employ an attorney to act by the year as legal adviser for the county. *Meller v. B. Co. Com. Logan Co.* (1894) 4 Ida. 44; 35 Pac. 712. Power to employ counsel is restricted to suits in which the county is a party in interest and does not include criminal cases nor authorize the board to employ counsel in such cases. *Conger v. Commrs. Latah Co.* (1897) 5 Ida. 347; 48 Pac. 1064.

The discretion of the board of county commissioners in employing special counsel to represent the county in litigation will not be disturbed unless abused. *Anderson v. Shoshone Co.* (1898) 6 Ida. 76; 53 Pac. 105.

Printing Delinquent Tax List: The authority to contract "for the printing of the delinquent tax list" is vested in the board of county commissioners and not in the tax collector. *Jolly v. Latah Co.* (1897) 5 Ida. 301; 48 Pac. 1063.

Publication of Statement: Where a board of county commissioners adjourns from day to day, the statement provided for in this section should not be published until after the term is adjourned sine die. The word "session" as here used is synonymous with the word "term." *Ravenscraft v. B. Commrs. Blaine Co.* (1897) 5 Ida. 178; 47 Pac. 942.

Refunding Taxes: The board of county commissioners has no power to refund a tax which has been paid, whether the tax is illegal or not. *Howell v. Board of Commrs.* (1898) 6 Ida. 154; 53 Pac. 542. But see Sec. 1791.

Passing on Statutes: The board of county commissioners has no power to pass upon the constitutionality of a statute, in acting on a claim presented to it. *Ib.*

Supplies for Elections.

Sec. 1918. The board must provide all poll lists, poll books, blank

returns and certificates, proclamations of election and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

Historical: Rev. St. 1887, Sec. 1763.
See 13 Ter. Ses. (1885) 106, Sec. 12.

California Legislation: Same: Pol. Code 1872, Sec. 4064; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Commissioners to furnish election supplies: Secs. 402,

403; to furnish supplies to registrar: Sec. 394; to provide two sets of ballot boxes for certain precincts: Sec. 445.

Cited: Corker v. Pence (1906) 12 Ida. 152; 85 Pac. 388.

Subpoenas for Witnesses.

Sec. 1919. The board may, by their chairman, or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction.

Historical: Rev. St. 1887, Sec. 1768.

California Legislation: Same: Pol.

Code 1872, Sec. 4067; Deering's Code, ib.; Kerr's Code, ib.

Enforcement of Attendance and Testimony.

Sec. 1920. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a court of justice. Obedience to the subpoena, or to an order to attend, or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of, the Code of Civil Procedure.

Historical: Rev. St. 1887, Sec. 1769.

California Legislation: Same except "disobedience" for "obedience", line 3, and "of Chapter 2, Title 3, Part 4" inserted after "provisions", last line:

Pol. Code 1872, Sec. 4068; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Rights and duties of witnesses: Secs. 6090-6095.

Fees Need Not Be Prepaid.

Sec. 1921. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners, are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board may allow them reasonable compensation for services and attendance.

Historical: Rev. St. 1887, Sec. 1770.

California Legislation: Same except "supervisors" for "commissioners",

line 3, and "must" for "may", line 5: Pol. Code 1872, Sec. 4069; Deering's Code, ib.; Kerr's Code, ib.

Leave of Absence to Officers.

Sec. 1922. The board of commissioners may grant to any county officer of their respective counties (except the probate judge of such county) leave of absence from their county and the State, for a period of not exceeding ninety days, during which time the absence of such officer does not work forfeiture of his office: *Provided*, That before the granting of such leave of absence, the officer (except county commissioners) must appoint a deputy to perform the duties

of his office, as by statute in such cases made and provided, and must present to, and file with, the board of commissioners of his county the written consent of each person liable on his official bond, that such leave of absence be granted: And, *Be it further provided*, that no leave of absence shall be granted to more than any one county commissioner at the same time.

Historical: Rev. St. 1887, Sec. 1785. | amended act 15th Ter. Ses. (Laws
(See 7 Ter. Ses. (1873) 27, Sec. 1); | 1888-89), 63.

Appointment of Fire Guard.

Sec. 1923. When a petition, signed by at least five of the tax payers residing in any town or village, is presented to the board asking that a committee be appointed for the purpose of inspecting chimneys, stove pipes and fire places, the board, at their first regular meeting, must act upon such petition by appointing not less than three nor more than five tax payers of such town or village, who shall constitute a "fire guard," within such limits as may be designated by the commissioners.

Historical: Rev. St. 1887, Sec. 1788.
10 Ter. Ses. (1879) 12, Sec. 1.

Powers of Fire Guard.

Sec. 1924. They are invested with the power to examine fire places, stove pipes, chimneys and fire escapes in all public and private buildings within the limits designated by the commissioners, and may, when in their opinion there exists danger from fire in any building, give a notice in writing to the owner or occupant thereof, requiring him to repair, alter or remove defective or insecure chimneys, fire places, stoves or stove pipes, within a reasonable time; and upon his refusal or failure to comply with such written order, the board may have the same done at the expense of such owner or occupant.

Historical: Rev. St. 1887, Sec. 1789.
10 Ter. Ses. (1879) 12, Sec. 2.

Same: Payment for Alterations and Repairs.

Sec. 1925. To enforce the payment of such alterations and repairs, the fire guard may seize so much of the personal property of any person liable and refusing or neglecting to pay for such alterations and repairs, as will be sufficient to pay for the same and costs of seizure, which costs shall not exceed three dollars, and may sell the same at any time or place upon giving a verbal notice of one hour previous to such sale.

Historical: Rev. St. 1887, Sec. 1790.
10 Ter. Ses. (1879) 12, Sec. 3.

Notice Concerning Camp Fires.

Sec. 1926. It is the duty of the board of county commissioners of each county in this State, to cause to be erected in a conspicuous place at the side of each public highway, and at such places as they may deem proper, a notice in large letters, substantially as follows:

"Camp fires must be totally extinguished before breaking camp,

under penalty of not to exceed six months imprisonment, or three hundred dollars fine, or both, as provided by law.

(Signed.)

"County Commissioners."

The erection and maintenance of such notices shall be at the expense of the respective counties, and at least ten in number of such notices shall be posted in each and every county in this State.

Historical: Rev. St. 1887, Sec. 1792.
Act Feb. 10, 1887. Omitting "within
sixty days after this act takes effect."

Control Over Wires Crossing Railroad Tracks.

Sec. 1927. It shall hereafter be unlawful for any corporation or person to string any wire, electric or other, over the tracks of any railroad company, except at such places and in such manner as shall be authorized and approved by the board of county commissioners of the county wherein such crossing with such wire is proposed, and any corporation or person desiring to so string any wire shall give such railroad company notice in writing of the place and manner in which it desires to string the same, and the place where, and the time when, it will apply to said board of county commissioners for approval and authority as above required, which notice shall be served at least ten days before the time of hearing such application.

Historical: Laws 1907, 535, Sec. 1.

Order to Change Wires.

Sec. 1928. The boards of county commissioners of the several counties in the State of Idaho shall, either by personal examination or otherwise, obtain information as to all places where the tracks of railroads are crossed by wires strung over said tracks, and whenever in their judgment such wires should be raised to a greater height, or other thing done with reference thereto to guard against accidents, they shall order such change or changes to be made, and shall apportion any expense incident thereto between the companies or persons affected, as may be deemed just and reasonable: *Provided*, That in no case shall the height of any wire strung or to be strung across or over such or any railroad tracks be less than twenty-five feet, excepting trolley wires, which shall not be less than twenty feet from the top of the rail of said railroad tracks.

Historical: Laws 1907, 535, Sec. 2.
Omitting "as soon as possible after
the passage of this act."

Penalty for Disobedience of Order.

Sec. 1929. It shall be the duty of every corporation and person to whom an order made by the board of county commissioners of the respective counties in this State under this and the two preceding sections shall be directed, to comply with such order in accordance with its terms, and for any neglect to so comply therewith, any such corporation or person shall be liable to a penalty of one hundred dollars, and to a like penalty for every ten days during which said neglect shall continue. Any such penalty may be recovered by an appropriate action instituted by the county where such violation or

disobedience has been committed, and said penalty shall be recovered by said county, and it shall be the duty of the prosecuting attorney of the county to bring and prosecute any such action in the name of the county, at the request of the said board of county commissioners.

Historical: Laws 1907, 535, Sec. 3.

Neglect of Duty by Commissioners.

Sec. 1930. Any commissioner who neglects or refuses, without just cause therefor, to perform any duty imposed on him, or who wilfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or wilfully, fraudulently or corruptly attempts to perform an act, as commissioner, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for every such act.

Historical: Rev. St. 1887, Sec. 1791. The phrase "without just cause therefor" is transposed for grammatical reasons.

California Legislation: Same except "supervisor" for "commissioner", and

additional provisions: Pol. Code 1872, Sec. 4086; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Penalty for neglect of duty by officers: Sec. 6534.

ARTICLE 3.

ERECTION OF PUBLIC BUILDINGS.

Section

1931. Erection of court house, and provision for offices.

1932. Same: Bond election.

1933. Purchase of site and letting of contract.

Section

1934. Statutes governing election and bond issue.

Erection of Court House and Provision for Offices.

Sec. 1931. The board must cause to be erected or furnished, a court house, jail and such other public buildings as may be necessary, and must, when necessary, provide offices with necessary furniture for the sheriff, clerk of the District Court and ex-officio auditor and recorder, county treasurer, prosecuting attorney, probate judge, county assessor, county surveyor and superintendent of public instruction, and must draw warrants in payment of the same: *Provided*, That the contract for the erection of any such buildings must be let, after thirty days' notice for proposals, to the lowest bidder who will give security for the completion of any contract he may make respecting the same: And, *Provided, further*, No contract must be let under the provisions of this section when the expenses thereunder will exceed one thousand dollars. The board must also provide all necessary books of record for the county auditor and recorder, county treasurer, county assessor, and tax collector, clerk of the District Court, probate court, county surveyor, county superintendent of public instruction, and the books and stationery for the use of the board, and so much as is necessary for the use of said county officers in the transaction of official business.

Historical: Rev. St. 1887, Sec. 1761. (See 8 Ter. Ses. (1875) 520, Sec. 13); amended Laws 1905, 228, Sec. 1.

Application: This section does not apply to contracts for the purchase of real estate for the erection of a

court house, when the purchase of such ground would not create an indebtedness on the part of the county in excess of the revenue of the county for the year in question, after deduct-

ing from said revenue all indebtedness incurred by said county up to the time of said purchase. *Ball v. Bannock Co.* (1897) 5 Ida. 602; 51 Pac. 454.

Same: Bond Election.

Sec. 1932. Whenever the interests of any county require it, and the board of commissioners of the county deem it for the public good to purchase a site and erect thereon a court house and jail, or either thereof, and furnish the same; and the expense of purchasing such site, or erecting such buildings of suitable size and capacity and furnishing the same would exceed the revenue of one year applicable to that purpose, and the board deems it for the public good to bond the county for the purpose of providing funds therefor, the board of commissioners may, by a resolution adopted at a regular or any special meeting called for that purpose, call a special election for such purpose, or submit, at any general election, the question of issuing negotiable coupon bonds to an amount deemed necessary to defray the expenses of purchasing such site and erecting and furnishing such buildings.

Historical: Laws 1905, 73, Sec. 1.

Repeal: This section repeals Revised Statutes, Sec. 1762. Decisions under the repealed section are as follows:

Cited: *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277; *McNutt v. Lemhi Co.* (1906) 12 Ida. 63; 84 Pac. 1054.

Construction With Constitution: Under the provisions of this section, a bridge cannot be built at a cost exceeding \$1000, unless one-third of the taxpayers who are voters petition therefor, but since the adoption of the Constitution this provision has been changed and only applies when the revenue for the fiscal year is not exceeded, for if such cost exceeds the revenue of the fiscal year, the bridge cannot be built without a two-thirds vote. *Dunbar v. Board of Commrs.* (1897) 5 Ida. 407; 49 Pac. 409.

Advertisement for Bids: In the matter of advertising for bids and letting contracts for public buildings or improvements, the provisions of this section must be substantially followed, and before a board of county commissioners can legally advertise for competitive bids for the erection of a bridge, they must adopt plans and specifications of such bridge, and said notice must contain explicit specifications of the proposed bridge. Any contract made without adopting such specifications, or made when the specifications have been adopted after publication of the notice, is void. *Andrews v. Board of Commrs. of Ada Co.* (1900) 7 Ida. 453; 63 Pac. 592. The contract must be let to the lowest responsible bidder. *Ib.*

Purchase of Site and Letting of Contract.

Sec. 1933. If two-thirds of the qualified electors of the county voting at such election, vote in favor of the issuance of the bonds, the board of commissioners shall select and purchase, or, if necessary, cause to be condemned, for the use of the county, a suitable site for said buildings, and cause to be prepared plans and specifications for such court house and jail, or either thereof as the case may be, and advertise in a weekly newspaper of the county for thirty days calling for sealed proposals or bids for the construction of said buildings. The published notice shall contain a general statement of the character and limited cost of the building or buildings, and state that the plans and specifications thereof may be found and examined in the office of the clerk of the board, and state the day when the sealed proposals will be opened and considered. The sealed proposals must be opened and considered publicly, and the contract let to the lowest

responsible bidder, unless all bids are rejected; and if all bids are rejected, the board may advertise for new bids, or let the contract, provided it be for a less sum than that offered by the lowest bidder. The board must require a good and sufficient bond of the contractor conditioned for the faithful performance of the contract according to the plans and specifications. The board shall have full power and authority to do and perform any act in relation to purchasing such site and erecting said buildings, at any special or called meeting when all members of the board are present, or at any regular meeting of the board.

Historical: Laws 1905, 73, Sec. 3.

Statutes Governing Election and Bond Issue.

Sec. 1934. The board shall be governed in calling and holding said election, and in the issuance and sale of said bonds, and in providing for the payment of the interest thereon, and for their redemption, by the provisions of Article 6 of this chapter, being Sections 1960 to 1972 inclusive of these Codes.

Historical: Laws 1905, 73, Secs. 2, 4, combined and re-written so as to refer to the proper article and sec-

tions of these Codes instead of to the sections of the Revised Statutes referred to in the original act.

ARTICLE 4.

PAYMENT OF BOUNTIES.

Section

- 1935. Bounty on wild animals.
- 1936. Special tax for bounty.
- 1937. Proof of claim.
- 1938. Surplus transferred to current expense fund.

Section

- 1939. Bounties on cougars, lions and panthers.
- 1940. Extermination of pests.
- 1941. Same: Board of control.
- 1942. Same: Payment of claims.

Bounty on Wild Animals.

Sec. 1935. The board of county commissioners of each county shall, upon a petition of one-fourth of the qualified voters who are taxpayers of the county, fix and determine the bounty for the destruction of each coyote, wildcat, fox, lynx, bear, squirrel, rabbit, gopher, muskrat, and nondescript and badger, and to prescribe rules for making proof of such destruction; and obtaining such bounty: *Provided*, That in no case shall the bounty for rabbits, gophers or squirrels be more than five cents for each animal destroyed.

Historical: Rev. St. 1887, Sec. 1760; amended Laws 1899, 20, Sec. 1; re-enacting Laws 1890-91, 31, Sec. 1. Omitting "panther, cougar, lion" which are covered by Laws 1905, 206,

which repeals all conflicting acts and parts of acts. This act, omitting the repealing clause, is found in Sec. 1939 post.

Special Tax for Bounty.

Sec. 1936. In order to pay bounties provided for in the preceding section, the board of county commissioners of any county in which a bounty for any or all the animals in said section has been offered, are hereby authorized and required to levy and cause to be collected a special tax of not more than one-half of one per cent on all taxable property in said county. Said levy shall be made at the same time that other taxes are levied and collected as other taxes are collected,

and when so collected shall be paid into the county treasury, and shall then become a special fund to be known as the scalp fund.

Historical: Rev. St. 1887, Sec. 1760a.

California Legislation: See Pol.

Code 1872, Sec. 4046, subd. 23; Deering's Code, ib.; Kerr's Code, ib.

Proof of Claim.

Sec. 1937. Any person desirous of obtaining any bounty offered for the destruction of any animals mentioned in Section 1935, shall present to the board of county commissioners a verified statement showing the number and kind of animals destroyed by the person seeking the bounty, and that the animals destroyed by him were killed in the county in which application for bounty is made. Such person shall also be required to furnish to the board of county commissioners the scalps or ears of the animals destroyed: *Provided*, Any party residing over ten miles from the county seat may make affidavit before any one authorized to administer oaths in said county, and said commissioners shall allow such claim when accompanied with the scalps from said animals. Said scalps and ears shall be immediately destroyed in the presence of the county commissioners.

Historical: Rev. St. 1887, Sec. 1760b.

Provisions Superseded: This section was superseded by Laws 1901, 205, Secs. 2 and 3, with respect to the animals enumerated in the latter

act. State v. Adams (1905) 10 Ida. 591; 79 Pac. 398. But the law of 1901 was expressly repealed by Laws 1905, 69, and this section is here treated as revived, as it was not totally repealed by the 1901 law.

Surplus Transferred to Current Expense Fund.

Sec. 1938. The county commissioners of any county in which a scalp fund shall have been established, may at the end of any quarter when there is a deficiency in the current expense fund of said county and a surplus in the scalp fund in excess of one hundred dollars, transfer all of such surplus exceeding one hundred dollars to the current expense fund, after all the warrants previously drawn on such scalp fund shall have been paid, and whenever there shall occur a deficiency in the scalp fund, the treasurer shall transfer from the current expense fund to the scalp fund, a sufficient amount of money to supply the deficiency, if not in excess of the amount previously transferred to the said current expense fund, and at the time due the scalp fund.

Historical: Rev. St. 1887, Sec. 1760c.

Bounties on Cougars, Lions and Panthers.

Sec. 1939. There shall be paid out of the current expense fund of each county for the destruction of each cougar, lion or panther, the sum of fifteen dollars. Proof of such destruction shall be made by the exhibition of the hide of such animal or animals with the right foreleg to the knee joint intact, which shall be skinned out in the presence of the board of county commissioners and the bone thereof destroyed by them. The claim must be presented with an affidavit stating that such lion, cougar or panther was destroyed in the county in this State where the claim was presented, naming the

county, and also the date when such animal or animals were killed, naming the postoffice nearest the place where the same were killed.

Historical: Laws 1905, 206, Sec. 1.

Extermination of Pests.

Sec. 1940. The board of county commissioners of any county in this State, on the petition of one hundred or more of the taxpayers of the county, at the time taxes are levied by them for State and county purposes, may and they are hereby empowered to levy a tax of not exceeding five mills on the dollar of the assessed valuation of all taxable property within such county, for the purpose of exterminating crickets, grasshoppers, rodents and rabbits, such tax to be collected in the same manner as other county taxes are collected, and to be placed in a fund known as the "Pest Fund."

Historical: Laws 1907, 24, Sec. 1.

Same: Board of Control.

Sec. 1941. The board of county commissioners of any county infested with any such pests shall appoint three men, residents of the county, who shall constitute the board of control to oversee the extermination of any such pests and the expenditure of the funds provided for herein, and shall each receive for his services, while necessarily engaged in such work, such compensation as shall be fixed by the board of county commissioners.

Historical: Laws 1907, 24, Sec. 2.

Same: Payment of Claims.

Sec. 1942. All claims for services rendered hereunder shall be presented to the said board of control and by them presented and filed with the board of county commissioners, and by said commissioners allowed and paid out of said pest fund in the same manner as other bills against the county are allowed and paid.

Historical: Laws 1907, 24, Sec. 3.

ARTICLE 5.

COUNTY FINANCES AND CLAIMS AGAINST COUNTY.

Section

- 1943. Check list of bills allowed.
- 1944. Transfer of moneys.
- 1945. Prohibition on allowance of claims.
- 1946. Officers not to present claims.
- 1947. Claims to be verified.
- 1948. Same: Other claims need not be passed upon.
- 1949. Partial allowance and reconsideration.
- 1950. Appeal from order of board.
- 1951. Notice and bond: Time of hearing.

Section

- 1952. Transmission of papers.
- 1953. Disposition of appeal: Costs.
- 1954. Dissatisfied claimant may sue.
- 1955. Warrants: How drawn and presented.
- 1956. Commissioners must be disinterested.
- 1957. Same: Transfer of license applications.
- 1958. Claims of commissioners must be verified.
- 1959. Preparation of financial statement by board.

Check List of Bills Allowed.

Sec. 1943. The board must require their clerk, at the close of every session, to furnish them with a list of all bills and accounts

of every nature approved by them at said session, giving the name of each person in whose favor an account or bill of any kind or nature has been allowed, with the amount allowed him and out of what fund the same is to be paid. They must compare their list with the record of their proceedings, and if not found correct, make it so and certify to said list and file it with the county treasurer, and the treasurer must pay no warrant drawn on any fund in the county treasury that does not correspond with the files furnished him by the board.

Historical: Rev. St. 1887, Sec. 1766.

Transfer of Moneys.

Sec. 1944. The board must not transfer any money from one fund to another, nor in any manner divert the money in any fund to other uses, except in cases expressly provided and permitted by law, nor make any preferred creditor, nor cause any warrant to be drawn payable out of its order except on the order of the District Court in cases provided by law, and the county treasurer must in all things observe these instructions: *Provided*, That when any money shall have been assessed and collected in any of the counties of this State, and the same set apart as a separate fund, for a special purpose, and from any cause the money in said fund shall have become inoperative for the purpose for which said fund was created, it shall be lawful for the board of county commissioners in such cases to transfer the money in said fund to such fund as the board of county commissioners may deem best.

Historical: Rev. St. 1887, Sec. 1767.
See 5 Ter. Ses. (1869) 100, Sec. 10.

Prohibitions on Allowance of Claims.

Sec. 1945. The board must not for any purpose contract debts or liabilities, except in pursuance of law. They must not allow any account, or cause or permit any warrant to be issued to any county or precinct officer entrusted with the collection, safe keeping or disbursement of the public funds, who has failed to make any statement or settlement of his accounts, as required by law, or who has failed to account for and pay over the public funds received by him when, and as required by law, or who is in any way a delinquent or defaulter in his trust, nor to any delinquent tax payer. They must not allow any account, or cause or permit any warrant to be drawn in favor of any person who is liable, either as principal or surety, upon any official or other bond, cognizable by the board, after a breach of such bond, or upon any recognizance in a criminal action or proceeding in the county, after the forfeiture of such recognizance. They must not provide any stationery for any officer, to be used for any purpose or act for which such officer is allowed a fee by law. They must not allow any account or claim of any officer while he neglects or refuses to perform any duty required of him by law.

Historical: Rev. St. 1887, Sec. 1771. | account or claim for services to a
Omitting "They must not allow any | deputy of any officer, or cause or per-

mit any warrant to be drawn therefor, except to and through, and in the name of his principal." That clause is superseded by Laws 1899, 405, Sec. 4, providing that the salaries of deputies shall be paid in the same manner that the salaries of county officers are paid. (Code, Sec. 2119.)

California Legislation: See Pol. Code 1872, Sec. 4070; Deering's Code, ib.; Kerr's Code, ib.

Officers Not to Present Claims.

Sec. 1946. No county officer must, except for his own services, present any claim, account or demand for allowance against the county, or in any way advocate the relief asked on the claim or demand made by another. Any citizen and tax payer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county.

Historical: Rev. St. 1887, Sec. 1772.

California Legislation: Same with first sentence omitted: Pol. Code 1872, Sec. 4071; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Advancing Money for County: A member of the board of commissioners who advances a fee to an attorney employed by the board, is entitled to receive the amount so advanced from the county; he is not barred from presenting his claim by the provisions

Action to Recover Fees: In an action by an officer against a county to recover fees alleged to be due such officer, the complaint must show that such officer is not in arrears as to public funds collected by him, and that his bill as presented to the commissioners was itemized and verified. (Concur. op.) *Pease v. Co. of Kootenai* (1901) 7 Ida. 731; 65 Pac. 432.

of this section. *Ponting v. Isaman* (1901) 7 Ida. 581; 65 Pac. 434.

Allowance of Illegal Compensation: An order of the board of county commissioners allowing one of their number compensation to which he is not entitled by law, is void and may be collaterally attacked, and the county may sue to recover back compensation so paid. (*Stockslager, C. J., dissents.*) *Kootenai Co. v. Dittmore* (1906) 12 Ida. 758; 88 Pac. 232.

Claims to Be Verified.

Sec. 1947. The board of commissioners must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the board within a year after the last item of the account accrued.

Historical: Rev. St. 1887, Sec. 1773. See 5 Ter. Ses. (1869) 100, Sec. 12.

California Legislation: Same except "supervisors" for "commissioners": Pol. Code 1872, Sec. 4072; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Rankin v. Jauman* (1895) 4 Ida. 394; 39 Pac. 1111.

Allowance of Expenses: Accounts of a county officer against the county for expenses incurred in his official capacity and while on official business, can only be considered by the board of county commissioners as a part of such officer's quarterly statement and cannot be considered as an

independent claim or account. *Clyne v. Bingham Co.* (1900) 7 Ida. 75; 60 Pac. 76.

Apportionment of Road Taxes: This section does not apply to a municipality which claims 25 per cent of the road taxes collected against property situated within its corporate limits, and such percentage should be paid over by the county without the presentation of a claim therefor; it is immaterial that no such claim is made within a year after the collection of the tax by the county. *Village of Mountainhome v. Elmore Co.* (1904) 9 Ida. 410; 75 Pac. 65.

Same: Other Claims Need Not Be Passed Upon.

Sec. 1948. No account must be necessarily passed upon by the board unless made out as prescribed in the preceding section, and filed by the clerk at least one day prior to the session at which it is asked to be heard.

Historical: Rev. St. 1887, Sec. 1774.
California Legislation: Same: Pol.

Code 1872, Sec. 4073; Deering's Code, ib.; Kerr's Code, ib.

Partial Allowance and Reconsideration.

Sec. 1949. When the board finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected. If they find it to be a proper county charge, but greater in amount than is justly due, the board may allow the claim in part and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment, the claim may be again considered at the next regular succeeding session of the board, but not afterwards.

Historical: Rev. St. 1887, Sec. 1775.

California Legislation: Same: Pol. Code 1872, Sec. 4074; Deering's Code, ib.; Kerr's Code, ib.

Cited: Campbell v. Commrs. Logan Co. (1894) 4 Ida. 181; 37 Pac. 329.

Acceptance of Warrant: A claimant cannot accept a county warrant for a portion of his claim allowed by the commissioners, and sue the county for the balance, but must either acquiesce in the determination of the board and accept the warrant in full settlement of his claim, or refuse the warrant and submit the whole claim to the court. Eakin v. Nez Perce Co. (1894) 4 Ida. 131; 36 Pac. 702. Nor can a claimant who accepts his warrant appeal from the order of the board disallowing his claim in full. Ellis v. Bingham Co. (1900) 7 Ida. 86; 60 Pac. 79.

Reconsideration of Claim: If an account presented to the board of

county commissioners is disallowed in part and the claimant is unwilling to receive such amount in full payment the claim may again be considered at the next regular succeeding session of the board, but not afterwards. Clyne v. Bingham Co. (1900) 7 Ida. 75; 60 Pac. 76.

Illegal Allowances: The claim of a sheriff against the county for serving subpoenas in some other county, is an unnecessary expense, as subpoenas should be sent to the sheriff of the county where the witness may be, and any allowance of such claim is wrongful and in violation of law. Ib.

Same—Action to Recover: Where the county commissioners illegally allow a claim of a county officer and county money is paid in settlement of such claim, the county may sue to recover the amount of such payment. Ada Co. v. Gess (1895) 4 Ida. 611; 43 Pac. 71.

Appeal From Order of Board.

Sec. 1950. Any time within twenty days after the first publication or posting of the statement, as required by Paragraph 19 of Section 1917, an appeal may be taken from any act, order or proceeding of the board, by any person aggrieved thereby, or by any tax payer of the county when any demand is allowed against the county or when he deems any such act, order or proceeding illegal or prejudicial to the public interests; and no such act, order or proceeding whatever, which directly or indirectly renders the county liable for the payment of the sum of three hundred dollars or over, or its equivalent, shall be valid until after the expiration of the time allowed for appeal or until such appeal, if taken, shall be finally determined; but there is excepted from the operation hereof all orders for the payment of those sums specially directed by law to be paid, or payments in fulfillment of acts or proceedings made and confirmed according to the provisions hereof.

Historical: Rev. St. 1887, Sec. 1776; amended Laws 1895, 50, Sec. 1; re-enacted Laws 1899, 248, Sec. 1.

Cross Reference: Appeals from commissioners' orders relating to change of highways across private

lands: Sec. 933; from order revoking toll road, bridge or ferry license: Sec. 1046; from orders relating to formation of good road districts: Sec. 1051; from order granting or refusing a liquor license: Sec. 1508.

Cited: Mahoney v. Board of Co. Commrs. (1902) 8 Ida. 375; 69 Pac. 108. Corker v. Commrs. of Elmore Co. (1904) 10 Ida. 255; 77 Pac. 633. Foresman v. Board of Commrs. (1905) 11 Ida. 11; 80 Pac. 1131.

Who May Appeal: The county attorney may appeal to the District Court for an order of the board of county commissioners refusing to comply with his request to require certain officers to turn certain fees into the county treasury. Rhea v. Board of Co. Commrs. (1906) 12 Ida. 455; 88 Pac. 89.

This section applies only to persons and taxpayers and has no application to the county itself, and a failure to appeal from an order of the board of commissioners does not preclude the county from resisting the enforcement of a claim illegally allowed by the board of commissioners. (Stockslager, C. J., dissents.) McNutt v. Lemhi Co. (1906) 12 Ida. 63; 84 Pac. 1054. Kootenai Co. v. Dittemore (1906) 12 Ida. 758; 88 Pac. 232.

Appealable Orders: The following orders are appealable: Discretionary orders; Meller v. Board of Co. Commrs. of Logan Co. (1894) 4 Ida. 44; 35 Pac. 712. An order for the issuance and sale of funding bonds; Mason, etc., Co. v. Lieuellen (1895) 4 Ida. 415; 39 Pac. 1117. An order allowing a claim for printing the delinquent tax list; Jolly v. Woodward (1895) 4 Ida. 496; 42 Pac. 512. An order fixing the salaries of county officers; Reynolds v. Board of Commrs. (1899) 6 Ida. 787; 59 Pac. 730. An order opening a private road; Latah Co. v. Hasfurther (1907) 12 Ida. 797; 88 Pac. 433.

But owners through whose lands a private road is opened need not appeal, but may refuse to accept the award and compel condemnation proceedings by the county. *Ib.*

Non-Appealable Orders: No appeal lies from an order of the board of commissioners sitting as a board of equalization. Gen. Custer Min. Co. v. Van Camp (1884) 2 Ida. 40; 3 Pac. 22. Featham v. Board of Commrs. (1904) 10 Ida. 182; 77 Pac. 332. Humbird Lumber Co. v. Morgan (1904) 10 Ida. 327; 77 Pac. 433.

Time for Appeal: A person aggrieved by an order of the board of commissioners need not wait until the statement provided for in Rev. St. Sec. 1759, paragraph 19, shall have been published or posted, but may take his appeal forthwith. Ravenscraft v. Board of Commrs. (1897) 5 Ida. 178; 47 Pac. 942.

Effect of Appeal: An appeal taken under this section is not the commencement of a new action or proceeding, but is a mere transfer of the original proceedings from one tribunal to another. Van Camp v. Board

of Commrs. (1884) 2 Ida. 29; 2 Pac. 721.

Collateral Actions Prohibited: This section prescribes an adequate remedy for contesting claims illegally allowed by the board of county commissioners, and precludes a resort to equity by action to restrain the county treasurer from paying warrants issued on such claims. Picotte v. Watt (1892) 3 Ida. 447; 31 Pac. 805.

This statute provides a speedy and adequate remedy by which tax payers may procure a review of illegal action by the board of commissioners, and precludes resort to writ of review. Rogers v. Hays (1893) 3 Ida. 597; 32 Pac. 259.

Where no appeal is taken from an order of the county commissioners making a jury list, the District Court has no jurisdiction to quash the panel on ex parte motion of the prosecuting attorney. Heitman v. Morgan (1905) 10 Ida. 562; 79 Pac. 225.

A person aggrieved by an order of the board of county commissioners establishing a school district, should appeal from such order under this section and cannot attack the order for want of jurisdiction of the commissioners to make the same in a collateral proceeding. School District No. 25 v. Rice (1905) 11 Ida. 99; 81 Pac. 155.

Where the action of the board of commissioners in constituting a justice's precinct is merely voidable, and not absolutely void, it can be reviewed only on appeal and cannot be questioned in an action of quo warranto to try title to the office of justice in such precinct. Johnston v. Savidge (1905) 11 Ida. 204; 81 Pac. 616.

Collateral Actions Allowed: The fact that an appeal may be taken from an order of the commissioners allowing the account of a county officer, does not preclude the maintenance of a suit by the county to recover the amount of the account if the same is illegally allowed. Ada Co. v. Gess (1895) 4 Ida. 611; 43 Pac. 71.

Where a county is seeking to protect itself against the payment of warrants illegally or fraudulently issued by its board of commissioners, this section does not provide a plain, speedy and adequate remedy at law, and the county may sue to cancel such warrants. (Point reversed and overruled. Rehearing opinion 5 Ida. 188; 47 Pac. 824.) Co. of Ada v. Bullen Bridge Co. (1896) 5 Ida. 79; 47 Pac. 818.

The remedy to correct errors and irregularities in the action of a board of commissioners acting in a matter over which such board has jurisdiction, is solely by appeal. But where a board, in violation of the constitution, incurs a large debt in excess of the revenues for the fiscal year, without submitting such question to the

voters, such board is not acting within its jurisdiction, and the action is void, and may be attacked directly, indirectly or collaterally at any time or

place. *Dunbar v. Board of Commrs. of Canyon Co.* (1897) 5 Ida. 407; 49 Pac. 409. (Modifying *Morgan v. Board*, 4 Ida. 418; 39 Pac. 1118.)

Notice and Bond: Time of Hearing.

Sec. 1951. Such appeal may be taken to the District Court, or the Judge thereof, of the judicial district of which the county is a part, by serving upon the clerk of the board a notice of appeal so referring to the act, order or proceeding appealed from as to identify it. Upon notice in writing of such appeal being brought by any person to the attention of such Judge, he shall fix the earliest time, and a place convenient to himself, for the hearing of such appeal, which may be heard in a summary manner before him, or his court, and when, in his opinion, no serious injury will result from delay, the hearing shall be had during the next term of his court in the county from which the appeal comes. When the appeal is made for the purpose of protecting the interests of the county and of the people, no requirement shall be made of the appellant for security of costs, except that when the District Judge shall be of opinion that such appeal is not made in good faith, but is for delay and vexation, he may require the appellant to enter into an undertaking with good sureties in an amount sufficient to secure the payment of costs, and in all other cases like undertaking shall be required.

Historical: Rev. St. 1887, Sec. 1777; amended Laws 1895, 50, Sec. 1; re-enacted Laws 1899, 248, Sec. 1.

Necessity of Undertaking: No undertaking on appeal is necessary either on an appeal from an order of the board of county commissioners to the District Court, or from the District Court to the Supreme Court, on the same question, unless required by the Judge of the District Court for reasons mentioned in this section. *Ravenscraft v. Board of Commrs.* (1897) 5 Ida. 178; 47 Pac. 942.

An appellant from an order of a board of county commissioners must file an undertaking when the appeal is not taken for the purpose of protecting the interests of the county, or his appeal will be dismissed. *Davis v. Elmore Co.* (1904) 9 Ida. 764; 76 Pac. 910.

The giving of a bond is not a jurisdictional prerequisite to the perfection of an appeal from an order of a board of county commissioners, and such an appeal should not be dismissed for failure to give the bond in the absence of an order of the District Judge requiring the bond. *Great Northern*

Ry. Co. v. Kootenai Co. (1904) 10 Ida. 379; 78 Pac. 1078.

Discretion of Court: This provision vests the District Judge with discretionary power and a judgment entered hereunder, after hearing, finding that no necessity exists for an immediate hearing of an appeal from an order made by a board of county commissioners, and continuing the matter until the next regular term of the District Court, is an exercise of such discretionary power, and mandamus will not lie to compel such court to reverse its decision and hear the case. (Sullivan, C. J., dissents.) *Board of Commrs. of Shoshone Co. v. Mayhew* (1897) 5 Ida. 572; 51 Pac. 411.

Pleadings Not Required: Under the territorial statute governing appeals from county commissioners, it was held that no other written pleadings than the notice of appeal are required, and questions of law may be presented by motion to dismiss, by inspection or by demurrer. *Gorman v. Co. Commrs.* (1877) 1 Ida. 655.

Transmission of Papers.

Sec. 1952. When such appeal is taken the clerk of the board must, within five days, transmit to such District Judge a copy of the notice of appeal, the order, decision or proceeding appealed from, together with the accounts, bills, contracts or papers connected therewith and necessary to a proper hearing thereof; or, when this is not practicable, certified copies thereof, and of the record.

Historical: Rev. St. 1887, Sec. 1778 (see 5 Ter. Ses. (1869) 100, Sec. 20); amended Laws 1895, 50, Sec. 1; re-enacted Laws 1899, 248, Sec. 1.

Filing of Transcript: If appellant fails to file the transcript provided for in this section within the time limited, such appeal should be dismissed. *Clyne v. Bingham Co.* (1900) 7 Ida. 75; 60 Pac. 76. *Ellis v. Bingham Co.* (1900) 7 Ida. 86; 60 Pac. 79.

Transmission of Papers: An appeal from the county commissioners is perfected by the service of notice, and the transmission of papers by the clerk is a purely ministerial act, the neglect of which by him for the period prescribed by this section does not divest the District Court of jurisdiction of the appeal. *Humbird Lumber Co. v. Kootenai Co.* (1904) 10 Ida. 490; 79 Pac. 396.

Disposition of Appeal: Costs.

Sec. 1953. Upon the appeal, the matter must be heard anew and the act, order or proceeding so appealed from may be affirmed, reversed or modified; and, from the decision of the District Court, or Judge, either party may, within ninety days, appeal to the Supreme Court. Either of said courts, or said Judge, may make any rules necessary to a proper and speedy hearing in such appeals.

The costs shall be taxed against the losing party, except that when the appeal is taken in good faith to protect the interests of the county and the people, they shall not be taxed against the appellant; and, if it clearly appears that the order or proceeding appealed from was made fraudulently or in reckless disregard of the interests of the county or people, they may be taxed against those commissioners personally who assented to such order or proceeding.

Historical: Rev. St. 1887, Sec. 1779 (see 5 Ter. Ses. (1869) 100, Sec. 19); amended Laws 1895, 50 Sec. 1; re-enacted Laws 1899, 248, Sec. 1. "Ninety days" inserted for "five days" in reference to appeals to the Supreme Court, on the authority of Laws 1899, 273, Sec. 1, Subd. 4 (Codes, Sec. 4807) as construed in *Latah County v. Hasfurther* (1907) 12 Ida. 797; 88 Pac. 433.

Cited: *Clyne v. Bingham Co.* (1900) 7 Ida. 75; 60 Pac. 76. *Feltham v. Board of Commrs.* (1904) 10 Ida. 182; 77 Pac. 332. *Foresman v. Board of Commrs.* (1905) 11 Ida. 11; 80 Pac. 1131.

Trial De Novo: On an appeal from an order of the board of commissioners allowing a claim, the case should be tried anew, and evidence should be received on the issue involved. *Fisher v. Board Co. Commrs. Bannock Co.* (1895) 4 Ida. 381; 39 Pac. 552. *Latah Ca. v. Hasfurther* (1907) 12 Ida. 797; 88 Pac. 433. And since the trial must be de novo, the court can not act on a stipulation of the district attorney that the action of the commissioners was proper. *Campbell v. Board of Commrs.* (1896) 5 Ida. 35; 46 Pac. 1022. After the trial, no new trial is authorized. *Mahoney v. Board*

of Co. Commrs. (1902) 8 Ida. 375; 69 Pac. 108.

On an appeal from an order of the board of county commissioners allowing a claim, the issue may be submitted to the jury. *Fisher v. Board of Co. Commrs. Bannock Co.* (1895) 4 Ida. 381; 39 Pac. 552. But the court need not submit the case to the jury when, on the appellant's own showing he is not entitled to recover. *Gorman v. Co. Commrs.* (1877) 1 Ida. 655.

Defect in Statement: The respondent in an appeal from the board of county commissioners is not injured by a defect in the statement in the notice of appeal, where he appears in the District Court and moves for a further specification of the grounds of appeal, and the motion is complied with. *Fisher v. Board of Commrs. Bannock Co.* (1895) 4 Ida. 381; 39 Pac. 552.

Judgment: On appeal from an order of the county commissioners disallowing a claim, the court should either affirm the order, reverse it, annul it or modify it and send the order as modified back to the board with appropriate directions; it is improper for the court to enter a judgment on the claim against the county. *Gorman v. County Commrs.* (1876) 1 Ida. 627.

Dissatisfied Claimant May Sue.

Sec. 1954. A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the board, but not afterward; and if in such action judg-

ment is recovered for more than the board allowed, on presentation of the judgment the board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the board allowed, the board must pay the claimant no more than was originally allowed.

Historical: Rev. St. 1887, Sec. 1780.

California Legislation: Same: Pol. Code 1872, Sec. 4075; Deering's Code, ib.; Kerr's Code, ib.

Cited: Jolly v. Woodward (1895) 4 Ida. 496; 42 Pac. 512. Ada Co. v. Gess (1895) 4 Ida. 611; 43 Pac. 71.

Warrants: How Drawn and Presented.

Sec. 1955. Warrants drawn by order of the commissioners on the county treasury for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

Historical: Rev. St. 1887, Sec. 1781.

California Legislation: Same except "supervisors" for "commissioners":

Pol. Code, Sec. 4076; Deering's Code, ib.; Kerr's Code, ib.

Commissioners Must Be Disinterested.

Sec. 1956. No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

Historical: Rev. St. 1887, Sec. 1782. See 5 Ter. Ses. (1869) 100, Sec. 10, Subd. 8.

California Legislation: Same: Pol. Code 1872, Sec. 4077; Deering's Code, ib.; Kerr's Code, ib.

Cited: (Dis. op.) Ponting v. Isaman (1901) 7 Ida. 581; 65 Pac. 434.

Allowance of Money Advanced: Where a county was engaged in litigation,

and the necessity for the payment of a small amount of costs arose, and a member of the board of commissioners advanced the required sum, the allowance of the sum so advanced by the board will not be reversed on appeal. Osborne v. Ravenscraft (1897) 5 Ida. 612; 51 Pac. 618.

Same: Transfer of License Applications.

Sec. 1957. Whenever an application is made to the board for an order, franchise or license, relating to any toll road, bridge, ferry or other subject over which the board has jurisdiction, in which a majority of the board are not disinterested, the application, by order of the board, must be transferred to the District Court of the county; the clerk of the board must thereupon certify the application and all orders and papers relating thereto to the court to which the transfer is ordered; and thereafter the court to which the same is certified has full jurisdiction to hear and determine the application.

Historical: Rev. St. 1887, Sec. 1783.

California Legislation: Similar, but application is transferred "to the board of supervisors of an adjoining

county," also additional provision: Pol. Code 1872, Sec. 4078; as amended: Deering's Code, ib.; Kerr's Code, ib.

Claims of Commissioners Must Be Verified.

Sec. 1958. All claims against the county presented by members

of the board of commissioners for service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

Historical: Rev. St. 1887, Sec. 1786. Omitting "per diem and mileage or other" before "service." Laws 1901, 226 (Code, Sec. 2117) provides for the payment to the commissioners of an annual salary and "actual and necessary expenses." They no longer draw per diem and mileage as such.

California Legislation: Similar except "supervisors" for "commissioners": Pol. Code 1872, Sec. 4082; Deering's Code, ib.; Kerr's Code, ib.

Cited: Rankin v. Jauman (1895) 4 Ida. 394; 39 Pac. 1111.

Preparation of Financial Statement by Board.

Sec. 1959. The boards of county commissioners of the several counties shall, at the April session of said boards, prepare from said auditor's statement and have spread upon their minutes, a full statement of the financial condition of their respective counties for the preceding fiscal year, together with a concise description of all property owned by the county, with an approximate estimate of the value thereof. The said board shall cause to be printed the said auditor's statement in full for the information of the public.

Historical: Laws 1901, 294, Sec. 2.

ARTICLE 6.
COUNTY BOND ISSUES.

Section

- 1960. Commissioners may issue funding bonds.
- 1961. Prerequisites to issuance.
- 1962. Building, road and bridge bonds.
- 1963. Tax levy for interest and sinking fund.
- 1964. Bond tax levies in new counties and segregated areas.
- 1965. Form of bonds.
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Section

- 1967. Application of proceeds of bond issue.
- 1968. Notice of bond election.
- 1969. Conduct of election: Application of election law.
- 1970. Officers of election: Canvass of returns.
- 1971. Form of ballot.
- 1972. Voting on bonds at general election.

Commissioners May Issue Funding Bonds.

Sec. 1960. The board of county commissioners of any county in this State, may issue negotiable coupon bonds of their county for the purpose of paying, redeeming, funding or refunding the outstanding indebtedness of the county, as hereinafter provided, whether the indebtedness exists as warrant indebtedness, or bonded indebtedness. Said bonds shall be issued as near as practicable in denominations of one thousand dollars each, but bonds of the denominations of five hundred and one hundred dollars may be issued when necessary. Said bonds must bear interest at a rate of not to exceed six per cent per annum, the interest to be paid on the first day of January and the first day of July in each year, at the office of the county treasurer, or at such bank in the City of New York as may be designated by the board of county commissioners; such bonds to be redeemed by the county in the following manner: Ten per cent of the total amount issued to be paid in ten years from the date of issue; and ten per cent annually thereafter until all of said bonds are paid. But said bonds of any part thereof may, at the option of

the county issuing the same, be redeemed at any time after ten years from the date of their issue, provided such time and option be stated upon the face of each bond, and each bond must be redeemed in the order it is numbered.

Historical: Rev. St. 1887, Sec. 3602; amended Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

What May Be Funded: This section authorizes counties not only to fund their bonded indebtedness, but also their warrant indebtedness. *Bannock Co. v. Bunting* (1894) 4 Ida. 156; 37 Pac. 277.

Curative Act: Since this and the

following sections re-enact the funding act of March 8, 1895, and the act of March 6, 1899, (Laws 1899, p. 368) validates bonds issued under the act of 1895, bonds issued under said last mentioned act are binding county obligations, notwithstanding defects in the manner of passage of such act. *Crocheron v. Shea* (1899) 6 Ida. 593; 57 Pac. 707.

Prerequisites to Issuance.

Sec. 1961. For the purpose of extending the time of payment of said outstanding indebtedness, or reducing the interest charged, or when the interests of the county require it, the board may issue said bonds, in exchange for bonds, theretofore issued by the county, or for valid and legal warrants of the county, then outstanding, and may do so by resolution of the board at a regular meeting thereof, and without a vote of the people. Before any bonds shall be issued or exchanged under this section, the board of county commissioners shall ascertain that the bonds or warrants the payment of which is to be extended, or which are to be taken in exchange for the new issue of bonds, are valid and legal obligations to the county, and their finding of fact shall be entered of record on the minutes of their proceedings at least ten days before any exchange is made, as herein provided. The said board shall also, before issuing any bonds under this section, deduct from the total outstanding legal indebtedness of the county at the time of the issue of said bonds, the cash on hand in the treasury of the county, that is available for the payment of said legal indebtedness, or any part thereof, and the issue of bonds as in this section provided for, shall in no case exceed the aggregate or total legal indebtedness of the county then outstanding, less the cash on hand to be applied in payment and discharge of said indebtedness.

Historical: Rev. St. 1887, Sec. 3603; amended Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

Conclusiveness of Order: An order of the board of commissioners, made in accordance with this section, fixing the indebtedness of the county and

providing for the issuance of funding bonds, which is affirmed on appeal to the District Court, cannot be thereafter collaterally attacked. *Blaine Co. v. Smith* (1897) 5 Ida. 255; 48 Pac. 286.

Building, Road and Bridge Bonds.

Sec. 1962. When the interests of the county require it and the board of commissioners of the county deem it for the public good to bond the county to fund or refund the outstanding obligations of the county, or bond the county for the purpose of acquiring funds for purchasing a site and erecting a court house and jail or a jail thereon, or for the construction or repair of roads or bridges, or to assist any city or village in said county in constructing a free bridge over any navigable stream within, or partly within, or adjoining, the limits of any such city or village, or for any one or more of said

purposes, and the indebtedness or liability of the county that may be created by the bonding, funding or refunding aforesaid, or in purchasing a site and erecting a court house and jail or a jail thereon, and for the construction or repair of roads or bridges, or for assisting any city or village in the construction of any such free bridge as aforesaid, or for any one or more of said purposes, exceeds the income or revenue of the county for that year, the board of commissioners may issue bonds of the county as provided by Section 1960: *Provided*, That the issuance of such bonds be first authorized by a vote of two-thirds of the qualified electors of the county, voting at an election held for that purpose, as hereinafter provided: And *Provided, further*, That before the board of county commissioners shall issue any bonds to fund or refund the indebtedness of the county as in this section provided, they shall deduct from the legal indebtedness of the county, at the time of the issue of said bonds, the cash on hand in the county treasury applicable to the discharge of said indebtedness, and may issue bonds for the remainder of the indebtedness.

Historical: Rev. St. 1887, Sec. 3604; amended Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 136, Sec. 1; amended Laws 1899, 443, Sec. 1.

Cited: Andrews v. Board of Commrs. (1900) 7 Ida. 453; 63 Pac. 592.

Tax Levy for Interest and Sinking Fund.

Sec. 1963. The board must cause to be levied annually, upon all the taxable property of the county, in addition to other authorized taxes, a sufficient sum to pay the interest on all bonds disposed of in pursuance of this article, and must, at least one year before such bonds become due, and in time to provide the means for their payment, cause to be levied a sufficient additional sum to pay said bonds as they become due, and all such taxes must be levied, assessed and collected as other county taxes are levied, assessed and collected, until the bonds so issued are fully paid, including the interest thereon. The faith, credit, and all taxable property within the limits of the county, as constituted at the time of such issue, are, and must continue, pledged to the payment of said bonds. Should the tax for the payment of interest on any bonds issued under the provisions of this article, at any time not be levied or collected in time to meet such payment, the interest must be paid out of any moneys in the county general, or current expense, fund, and the moneys so used for such payment of interest must be repaid to the fund from which so taken, out of the first moneys arising from taxes collected on interest account as herein provided, and any excess over and above the interest charge shall be placed in a sinking fund, to be known as the "Bond Tax Sinking Fund." The moneys in the sinking fund created under this section may be invested in bonds or warrants of the State, or bonds issued by any county or city or school district in any State of the United States; and the county treasurer may, when authorized at a regular meeting of the board of county commissioners, make the investment for the county.

Historical: Rev. St. 1887, Sec. 3605; amended Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

Cited: In re Counties v. County of

Alturas (1894) 4 Ida. 145; 37 Pac. 349. Shoshone Co. v. Profit (1906) 11 Ida. 736; 84 Pac. 712.

Bond Tax Levies in New Counties and Segregated Areas.

Sec. 1964. Should any part of a county that has incurred a bonded indebtedness be cut off and annexed to another county, or erected into a new or separate county, the assessor of the county to which the segregated portion is attached, or the assessor of the new county created as aforesaid, shall, upon notice from the board of county commissioners of the original county from which such segregated portion was detached, given at the regular session of the board when county and State taxes are levied, collect in said segregated territory, and in addition to the other taxes collected by him for county and State purposes, and at the same time and in the same manner, the tax levied by said board of commissioners as herein provided; and the laws of the State relating to the levy and collection of taxes, and prescribing the powers, duties and liabilities of officers charged with the collection and disbursement of the revenue arising from taxes, are made applicable to this article. The money collected by the assessor as aforesaid shall be paid over by the treasurer of the county collecting it to the treasurer of the county losing the said territory, and for the purposes herein directed, but such segregated territory so attached to another county, or erected into a new county, shall be relieved of the annual tax, levied as provided in the foregoing section, when the county acquiring the same, or the new or separate county, pays to the county losing the territory, that proportion of the whole indebtedness, together with legal interest thereon, that the assessed value of property in the segregated territory bears to the assessed value of the property in the whole county, as constituted before the division or segregation thereof.

Historical: Rev. St. 1887, Sec. 3606; amended Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

Cited: *Shoshone Co. v. Profit* (1906) 11 Ida. 763; 84 Pac. 712.

Form of Bonds.

Sec. 1965. The bonds mentioned in this article must be signed by the chairman of the board of county commissioners, attested by the clerk of said board and bear the seal of said board, and be countersigned by the county treasurer of the county. Each bond must state upon its face the amount for which the same is issued, the date of issue, time and place of payment, and rate of interest, and must also recite that it is issued in conformity with the provisions of this article, and this article must be printed upon the back of each bond. There must be attached to each bond, when negotiated, semi-annual interest coupons covering the interest expressed in the bond from the date of issue until paid; the coupons annexed to such bonds must be signed by the treasurer of the county. Each coupon must bear a number corresponding to the number of the bond to which it is attached, and must state upon its face the amount for which the same is issued, the date of issue and the date and place of payment thereof.

Historical: Rev. St. 1887, Sec. 3607; amended Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

Sale and Redemption of Bonds.

Sec. 1966. The said board of county commissioners must give at least twenty days' notice by publication in some newspaper published in the county, if there be one, otherwise by three notices posted up in the county, one of which must be at the court house door, of its intention to issue, negotiate and sell such bonds, or of its intention to issue such bonds for exchange, and shall invite bidders therefor. Said bonds must be sold or exchanged upon the best terms and upon the lowest rate of interest at which said bonds can be sold or exchanged, and the said board shall have the right to reject any or all of the bids offered, and may re-advertise for bids as herein provided for, by original notice. If the offers for purchase or exchange are accepted, the board must procure the proper engraving and printing of said bonds, which must be numbered consecutively, and must be duly registered by the auditor of the county in a book kept for that purpose; and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached and any other proper description thereof for future identification. The said board must, from time to time, in such amounts as it may deem best, and in accordance with its contract, deliver said bonds to the county treasurer, and take and file his receipt therefor, and charge him with all bonds so delivered. Any duties required of said board in pursuance of the provisions of this section may be performed at any general, special or called meeting thereof. The treasurer must, under the general supervision of said board, deliver said bonds for cash, or exchange them for any of the county indebtedness for the redemption of which they were issued, but in no case must said bonds be sold or exchanged for less than their face or par value and accrued interest at time of disposal; nor must any county indebtedness be redeemed at more than its face value and any interest that may be due thereon. If any portion of said bonds issued for the redemption of prior indebtedness are sold for money, the proceeds thereof must be applied exclusively toward the redemption of said county indebtedness for the redemption of which such bonds were issued. The treasurer must give notice, as provided by law, of his readiness to redeem such indebtedness, and thereafter interest thereon shall cease. When the treasurer redeems any county indebtedness, he must indorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so redeemed, the time when, and the amount for which, redeemed; whether by money or the exchange of bonds, and the words "redeemed" and "cancelled." He must also keep a record of all bonds disposed of by him, showing their number, rate of interest, date and amount of sale, when, where and to whom payable; and if exchanged, for what, which record he must keep open for inspection for the public at all reasonable office hours. He must make such detailed statements to, and as often as required by, said board, of all his transactions under the provisions of this article, and return to the board evidences of indebtedness redeemed by him, cancelled as aforesaid.

Historical: Laws 1899, 136, Sec. 1;
re-enacting Laws 1895, 56, Sec. 1.

Application of Proceeds of Bond Issue.

Sec. 1967. It shall be the duty of the county treasurer to apply the funds derived from the sale of bonds to the payment of the indebtedness herein mentioned and to no other purpose: *Provided*, That after the expiration of one year from the date of the issuance of said bonds, all money derived from the sale of said bonds remaining in the treasury may be transferred to the current expense fund of said county by order of the board of county commissioners, and thereafter any and all warrants or other representative of the indebtedness for the redemption of which said bonds were issued, shall be paid out of said current expense fund when presented for payment. It shall be the duty of the county officials to levy, collect and apply the taxes herein provided for to the payment of interest and to the redemption of the principal of the bonds in the manner specified and for no other purpose, and any failure to comply with the conditions of this article by the proper officers, or any neglect or refusal to levy and collect any such taxes as aforesaid, shall be deemed a misdemeanor, and any county official guilty of the same, must, upon conviction, be fined in the amount equal to the sum that should have been levied, or for any misappropriation he shall be fined in the amount equal to the sum misappropriated, and imprisoned in the county jail for the term of not less than three months nor more than six months.

Historical: Laws 1899, 136, Sec. 1;
re-enacting Laws 1895, 136, Sec. 1;
amended Laws 1903, 366, Sec. 1.

Notice of Bond Election.

Sec. 1968. If the question of bonding the county as herein provided, is to be submitted to the voters of the county at a special election held for that purpose, the board shall cause printed or written notices of the intention to hold such an election to be posted in two or more conspicuous places in each precinct of the county, and shall also cause a printed notice of the intention to hold such an election to be published in one or more newspapers of the county, if any newspapers are printed therein. The said notices shall recite the action of the board in deciding to bond the county, the purpose thereof, and the amount of the bonds that are to be issued, and shall also specify the day of the election, the time during which the ballot box shall be open, which shall not be less than six hours; the notices posted in each of the several precincts shall also name the place of holding such election. The notices herein provided for shall be posted, or posted and published, at least twenty days before such election. Every male person over the age of twenty-one years, who is a citizen of the United States, and shall have resided in the State six months immediately preceding the election at which he offers to vote, and in the county thirty days, shall be entitled to vote at such election.

Historical: Laws 1899, 136, Sec. 1;
re-enacting Laws 1895, 56, Sec. 1.

Conduct of Election: Application of Election Law.

Sec. 1969. Such election shall be held in all respects in conformity with the general election laws so far as the same may be applicable,

except as herein provided, but all that part of the general election law relative to the apportionment of registrars and the registration of voters, the appointment of judges and clerks, and the establishment of voting booths and printing of an official ballot, and providing for an official stamp, and method of voting as provided in Sections 423, 424 and 425 of the general election law, shall not apply.

Historical: Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1. The reference to Secs. 77, 78 and 79 of the general election law was to the sec-

tions of 1891, and not of the 1899 law. Those sections are 423-425 of these Codes.

Officers of Election: Canvass of Returns.

Sec. 1970. The board of county commissioners shall appoint two judges and one clerk of election in each precinct, for the purpose of holding such election, and upon the failure of either to act, the electors present at the opening of the polls may fill vacancies. Such judges and clerk conducting such election shall make return of such election to the board of county commissioners, within three days after such election is held. The returns for bond elections shall be canvassed in the same manner as the returns for election of county and precinct officers are canvassed, and the result of the vote shall be officially declared by the county board of canvassers in the following manner: They shall record the total vote cast in each precinct for and against the proposed issue of bonds, in the book provided for recording the results of the general election, and shall make a complete copy of such record, duly certified to by them, and shall deposit the same with the auditor of the county.

Historical: Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

Cited: Bryan v. Montandon (1898) 6 Ida. 352; 55 Pac. 650.

Form of Ballot.

Sec. 1971. Such election shall be by ballot. The ballot shall be of white paper, three inches square, and shall contain the words: "Bond. Yes." "Bond. No." and shall have printed at the top the following instruction: "If the voter desires to vote for the issue of bonds, he he shall strike out the word 'No.' If he desires to vote against the issue, he shall strike out the word 'Yes.' The auditor of the county shall cause the ballots to be printed and distributed, and shall send a sufficient number to the judges appointed in the several precincts.

Historical: Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

Voting on Bonds at General Election.

Sec. 1972. The special election herein provided for, may be held at the same time and place at which the general election is held, and the officers of the general election in each precinct may serve as officers of the special election, but the notices of the election must be given, and the tickets printed and distributed as herein prescribed; the ticket when voted, shall be deposited in a separate box provided for its reception; the return of the vote by the judges of election shall be on a separate sheet from the return of the general election, and shall be canvassed as hereinbefore provided for.

Historical: Laws 1899, 136, Sec. 1; re-enacting Laws 1895, 56, Sec. 1.

CHAPTER 3.
COUNTY OFFICERS.

Article	Article
1. General provisions.	9. Prosecuting attorney.
2. Probate judge.	10. Surveyor.
3. County treasurer.	11. Coroner.
4. Sheriff.	12. County superintendent of public instruction.
5. Clerk of the District Court.	13. Justices of the peace and inferior officers.
6. Auditor.	
7. Recorder.	
8. Assessor and tax collector.	

ARTICLE 1.
GENERAL PROVISIONS.

Section	Section
1973. County officers enumerated.	1981. Offices to be kept at county seat.
1974. Precinct officers.	1982. Bond liable for penalties.
1975. Appointment of deputies.	1983. Officers may administer oaths.
1976. Same: During absence of officers.	1984. Residence of officers.
1977. Same: Failure to appoint deputy.	1985. Absence of officers from the State.
1978. Designation of senior deputy.	1986. Certain officers not to practice law.
1979. Appointment to be in writing and filed.	1987. Bonds of officers: Amount of penalty.
1980. Use of official name includes deputies.	1988. Same: Amounts not fixed.

Note: Oath of office: Sec. 271. Official bonds in general: Secs. 282-316. Resignations, vacancies and appointments: Secs. 317-332.

County Officers Enumerated.

- Sec. 1973. The officers of a county are:
1. A sheriff;
 2. A clerk of the District Court, who shall be ex-officio auditor and recorder, and ex-officio clerk of the board of county commissioners;
 3. An assessor, who shall be ex-officio tax collector;
 4. A probate judge;
 5. A prosecuting attorney;
 6. A county treasurer, who shall be ex-officio public administrator;
 7. A county superintendent of public instruction;
 8. A surveyor;
 9. A coroner;
 10. Three members of the board of county commissioners.

Historical: Rev. St. 1887, Sec. 2150. Titles of officers changed to conform to Const. Art. 18, Sec. 6; Art. 5, Sec. 18, both as amended.	Code, 1872, Sec. 4103; Deering's Code, ib.; Kerr's Code, ib.
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California Legislation: See Pol.	Cross Reference: County officers enumerated: Const. Art. 18, Sec. 6.
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Precinct Officers.

Sec. 1974. The officers of precincts are two justices of the peace, one constable, and such other inferior and subordinate officers as are provided for elsewhere in this Code or by the board of commissioners.

Historical: Rev. St. 1887, Sec. 1813.

California Legislation: Same except "townships" for "precincts"; "two" for "one" constable; "supervisors" for "commissioners"; Pol. Code 1872, Sec. 4104; Deering's Code, ib.; Kerr's Code, ib.

Cited: State ex rel Griffith v. Vineyard (1903) 9 Ida. 134; 72 Pac. 824. Johnston v. Savidge (1905) 11 Ida. 204; 81 Pac. 616.

Appointment of Deputies.

Sec. 1975. Every county officer except probate judge, commissioner, and coroner, may appoint as many deputies as may be necessary for the prompt and faithful discharge of the duties of his office; *Provided*, That no deputy appointed by a county school superintendent shall exercise the duties of such office except during the period when said superintendent may be absent from his county.

Historical: Rev. St. 1887, Sec. 1815; amended act 15th Ter. Ses. (Laws 1888-89) 13.

California Legislation: See Pol. Code 1872, Sec. 4112; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Deputies to take and file oaths: Sec. 273; appointment of deputy recorders for mining districts: Sec. 3215.

Discretion of Officer: This section of the statute evidently places the question as to whether one or more deputies are required to properly discharge the duties of the office wholly

within the discretion of the officer making the appointment. Campbell v. Board of Commrs. (1896) 5 Ida. 53; 46 Pac. 1022.

Effect of Constitution: Art. 18, Sec. 6 of the Constitution does not repeal this section, but merely relieves the county from the payment of salaries to deputies other than those appointed by the sheriff, auditor, recorder and clerk when such appointment is authorized, and the salaries of the deputies are fixed by the county commissioners. Taylor v. Canyon Co. (1900) 7 Ida. 171; 61 Pac. 521.

Same: During Absence of Officers.

Sec. 1976. Any county officer who may be granted leave of absence from the county wherein he resides and holds office, is required to appoint a good and sufficient deputy to act for him and in his place while absent.

Historical: Rev. St. 1887, Sec. 1816. 8 Ter. Ses. (1875) 822, Sec. 1.

California Legislation: Different: Pol. Code 1872, Sec. 4112; Deering's

Code, ib.; Kerr's Code, ib.

Cited: Taylor v. Canyon Co. (1900) 7 Ida. 171; 61 Pac. 521.

Same: Failure to Appoint Deputy.

Sec. 1977. Should any county officer who is granted leave of absence fail to appoint a deputy as required by this chapter, the act granting such leave of absence is null and void and the office vacant, and the vacancy must be filled by the board of county commissioners of the county.

Historical: Rev. St. 1887, Sec. 1817. 8 Ter. Ses. (1875) 822, Sec. 2.

Cited: Taylor v. Canyon Co. (1900) 7 Ida. 171; 61 Pac. 521.

Designation of Senior Deputy.

Sec. 1978. When a county officer has more than one deputy he must designate one, by endorsement upon his appointment, as senior deputy, and in case of a vacancy in the office, by death, resignation, or otherwise, or of the officer's absence, or inability to perform the duties of his office, such deputy must continue to perform the duties of the office during such vacancy, absence, or inability.

Historical: Rev. St. 1887, Sec. 1818.

Cited: Taylor v. Canyon Co. (1900)

7 Ida. 171; 61 Pac. 521.

Appointment to be in Writing and Filed.

Sec. 1979. The appointment of deputies and subordinate officers must be made in writing, and filed in the office of the county recorder.

Historical: Rev. St. 1887, Sec. 1819.

See 8 Ter. Ses. (1875) 543; Sec. 14; also 556, Sec. 6.

California Legislation: Similar:

Pol. Code 1872, Sec. 4113; Deering's Code, ib.; Kerr's Code, ib.

Cited: Taylor v. Canyon Co. (1900)
7 Ida. 171; 61 Pac. 521.

Use of Official Name Includes Deputy.

Sec. 1980. Whenever the official name of any principal officer is used in any law conferring power, or imposing duties or liabilities, it includes his deputies.

Historical: Rev. St. 1887, Sec. 1820.

California Legislation: Same: Pol. Code 1872, Sec. 4114; Deering's Code, ib.; Kerr's Code, ib.

Cited: Taylor v. Canyon Co. (1900)
7 Ida. 171; 61 Pac. 521.

Officers to Be Kept at the County Seat.

Sec. 1981. Sheriffs, recorders, treasurers, assessors, and prosecuting attorneys must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock A. M. till five o'clock P. M., every day in the year except holidays. The probate judge must have an office at the county seat, and must establish such rules and hours for official business as may be necessary for the dispatch thereof.

Historical: Rev. St. 1887, Sec. 1822.

See 1 Ter. Ses. (1864) 475, Secs. 10, 63, 125.

California Legislation: Similar: Pol. Code 1872, Sec. 4116; Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: County superintendents to keep office at county seat, and designate certain office days: Sec. 587.

Bond Liable for Penalties.

Sec. 1982. Whenever, except in criminal prosecutions, any special penalty, forfeiture or liability is imposed on any officer for non-performance or mal-performance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

Historical: Rev. St. 1887, Sec. 1823.

California Legislation: Same: Pol.

Code 1872, Sec. 4117; Deering's Code, ib.; Kerr's Code, ib.

Officers May Administer Oaths.

Sec. 1983. Every county officer and every justice of the peace may administer and certify oaths.

Historical: Rev. St. 1887, Sec. 1824.

California Legislation: Similar: Pol.

Code 1872, Sec. 4118; Deering's Code, ib.; Kerr's Code, ib.

Residence of Officers.

Sec. 1984. The following officers must reside at the county seat of their respective counties: The probate judge, the sheriff, the as-

essor, the prosecuting attorney, the recorder, and the county superintendent of public instruction.

Historical: Rev. St. 1887, Sec. 1825. "County superintendent of public instruction" added on the authority of Laws 1899, 306, Sec. 1 (Code Sec. 584), which requires that officer to reside at the county seat. "Prosecuting attorney" for "district attorney."

California Legislation: Similar with additional provisions: Pol. Code 1872, Sec. 4119; Deering's Code, ib.; Kerr's Code, ib.

Absence of Officers From the State.

Sec. 1985. No county officer must absent himself from the State for more than twenty days unless with the consent of the board of county commissioners.

Historical: Rev. St. 1887, Sec. 1826; amended Laws 1899, 13, Sec. 2; re-enacting Laws 1897, 15, Sec. 1.

California Legislation: See Pol. Code 1872, Sec. 4120; as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Leave of absence granted by county commissioners: Sec. 1922.

Certain Officers Not to Practice Law.

Sec. 1986. Sheriffs, clerks of courts and their deputies, and constables, are prohibited from practicing law or acting as attorneys or counselors at law, or having as a partner a lawyer or anyone who acts as such.

Historical: Rev. St. 1887, Sec. 1827.

California Legislation: Same except "of courts and their deputies," line 1, omitted, and "and their deputies" in-

serted after "constables," line 2: Pol. Code 1872, Sec. 4121; Deering's Code, ib.; Kerr's Code, ib.

Bonds of Officers: Amount of Penalty.

Sec. 1987. County, district and precinct officers must execute official bonds in the following amounts:

1. County commissioners each in the sum of five thousand dollars;
2. Probate judges each in the sum of five thousand dollars;
3. County treasurers each in double the probable amount of money that may at any time come into his hands as such treasurer, to be fixed by the board of county commissioners, but in no case to be less than ten thousand dollars;
4. Sheriffs each in the sum of ten thousand dollars;
5. Clerks of the District Court each in the penal sum of five thousand dollars, with two sufficient sureties, to be approved by the Judge of the District, conditioned that he will faithfully perform the duties of his office and at all times account for and pay over all moneys in his hands as clerk; and the penalty of such bond may at any time be increased by the Judge of the District. The clerk may require a bond from any deputy.
6. County recorders each in the sum of not less than five nor more than twenty thousand dollars, to be fixed by the board of county commissioners, and to cover his duties and liabilities as recorder, auditor and clerk of the board of county commissioners;
7. Assessors each in the sum of five thousand dollars;
8. Tax collectors each in the sum of not less than five nor more

than fifty thousand dollars, to be fixed by the board of county commissioners;

9. Prosecuting attorneys each in the sum of two thousand dollars;

10. County superintendents of public instruction each in the sum of two thousand dollars;

11. County surveyors each in the sum of two thousand dollars, and with at least two sureties for the faithful and impartial performance of his duties;

12. Coroners each in the sum of one thousand dollars;

13. Public administrators each in the sum of two thousand dollars;

14. Justices of the peace and constables, each in the sum of not less than five nor more than ten hundred dollars.

Historical: Rev. St. 1887, Sec. 1828, forms the basis of this section. Subd. 5 is compiled from Rev. St. Sec. 274; that section required the clerk to deposit his bond with the Territorial Controller (now State Auditor), but in view of the fact that the clerk was at that time a district officer, there being but one clerk for each judicial district, that part of the section is deemed inapplicable to the present status of the clerk's office, which is, as defined by Const. Art. 18, Sec. 6, purely a county office. Subd. 8 (Subd. 7 of the original section) is given as amended by Laws 1888-89, 20. Subd. 9 (Subd. 8 of the original section) has "prosecuting attorneys" for "district attorneys" to conform with the present system. Subd. 10 (Subd. 9 in old section) "county superintendent of public instruction" inserted for "school superintendent," and "two" for "one" thousand dollars to conform to Laws 1899, 306, Secs. 1, 2. Subd. 11 (Subd. 10 of old section) is compiled from

Laws 1899, 295, Sec. 5. In this subdivision, too, a slight change is possibly made from the actual written law, as the 1899 law required the county surveyor to file his bond with the county commissioners. It is thought, however, that the meaning of this section is simply that the bond shall be filed with the county commissioners for their approval and then recorded in the official bond record the same as bonds of other county officers. No good reason is apparent for making a distinction in the case of county surveyors, and as a matter of practice none is made. It may also be noted that the change made in this section with reference to clerks of the District Court is also sanctioned by practice.

Cross Reference: General provisions relating to official bonds: Secs. 282-316.

Breach of Sheriff's Bond: See note to Sec. 293.

Same: Amounts Not Fixed.

Sec. 1988. When the amount of the bond to be given by any county, district or precinct officer is not fixed by law the amount must be fixed by the board of commissioners.

Historical: Rev. St. 1887, Sec. 1829.

California Legislation: Same except "or township" for "district or precinct," line 2; and "supervisors" for

"commissioners": Pol. Code 1872, Sec. 4123; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 2. PROBATE JUDGE.

Section

1989. Duties of probate judge.

Section

1990. Office to be provided.

Duties of Probate Judge.

Sec. 1989. The probate judge must:

1. Perform the duties of a magistrate;
2. Hold probate courts;

3. Take and certify acknowledgments to the execution of instruments in writing, and grant certificates to the official character of the county officers;

4. Perform such other duties as are prescribed in any of the laws of this State.

Historical: Rev. St. 1887, Sec. 1835.

California Legislation: Similar, but "county judge" for "probate judge": Pol. Code 1872, Sec. 4134; Superior Court system as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: To reside at county seat: Sec. 3885.

May take acknowledgments: Sec. 3124.

Duties under townsite law: Secs. 2147-2169.

To act in place of disqualified commissioner in granting ferry and toll bridge licenses: Sec. 1022.

Duties in appraisal of homestead for sale on execution: Secs. 3181-3195.

Fee for solemnizing marriage: Sec. 2626.

Approval of water master's bond: Sec. 3275.

To approve bond of irrigation district directors: Sec. 2378.

To approve bond of notary: Sec. 232.

To keep register of abstractors: Sec. 1416.

Fee for issuing abstractors' certificates: Sec. 1416.

To appoint viewers in case of disputes between adjoining proprietors as to partition fences, in the absence of a justice of the peace: Sec. 1269.

To approve bond of lumber inspectors: Sec. 1496.

To pass on claim to proceeds of unclaimed floating timber: Sec. 870.

To appoint appraiser for toll roads sought to be purchased by county: Sec. 1001.

Office to be Provided.

Sec. 1990. It shall be the duty of the board of county commissioners of the different counties of the State, when the county owns a fire proof building, to provide an office in said building for the uses of the probate judge and for the safe keeping and protection of all probate records.

Historical: Rev. St. 1887, Sec. 1836.

ARTICLE 3. COUNTY TREASURER.

Section

- 1991. Duties of county treasurer.
- 1992. Receipt of money.
- 1993. Treasurer must receipt for money.
- 1994. Redemption of warrants.
- 1995. Warrants not paid for want of funds.
- 1996. County warrant bulletin.
- 1997. Notice of payment of warrants.
- 1998. Same: Publication of notice.
- 1999. Penalty for paying unnecessary interest.
- 2000. Interest noted on warrant.
- 2001. Monthly settlements and statements: Annual settlement.
- 2002. Quarterly reports.
- 2003. Neglect to settle or report.
- 2004. Action against defaulting prosecuting attorney.
- 2005. Action against coroner or justice.
- 2006. Disposal of money or property found on dead body.

Section

- 2007. Same: Demand by legal representatives.
- 2008. Custody of county money.
- 2009. Suspension of treasurer pending action.
- 2010. Delivery of money and papers after death.
- 2011. Inspection of books.
- 2012. Examination of books.
- 2013. Deposit of county funds.
- 2014. Premium to be paid by banks: Statements.
- 2015. Bonds of depositories: Sureties: Deposits outside of county.
- 2016. Special deposits.
- 2017. Definitions.
- 2018. Investigation of security: Examination of books: Report.
- 2019. Offenses by treasurer.
- 2020. Same: Neglect.
- 2021. Bribery of treasurer a felony.
- 2022. Sale of security for default of bank.

Duties of County Treasurer.

Sec. 1991. The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

2. File and keep the certificates of the auditor delivered to him when moneys are paid into the treasury;

3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

4. So keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county auditor;

6. Disburse the county moneys only on county warrants issued by the county auditor, based on orders of the board of commissioners, or as otherwise provided by law.

Historical: Rev. St. 1887, Sec. 1840. 1 Ter. Ses. (1864) 475, Secs. 111, 112.

California Legislation: Same except "supervisors" for "commissioners," subd. 6: Pol. Code 1872, Sec. 4144; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Duties in relation to revenue: To file copy of levy: Sec. 1647. To file duplicate certificate of property sold to county: Sec. 1752. To compare duplicate certificates with certificate book: Sec. 1761. Duties on redemption from tax sale: Secs. 1771-1773. Entry of sale of certificates held by county: Sec. 1774. Settlements with State Auditor and Treasurer: Secs. 1795-1803. Monthly settlements with tax collector: Sec. 1817. Annual settlements with auditor: Sec. 1822. Duties with respect to the collection of license taxes: Secs. 1828-1841. Duties with respect to poll taxes: Secs. 1842-1862. Duties with respect to the collection of transfer taxes: Secs. 1873-1897.

Duties as public administrator: Secs. 5680-5695.

To apply poll taxes collected in contract road districts to the county road fund: Sec. 892. To accept and receipt for tax for license to operate toll roads: Secs. 998. To receive payment

of ferry and bridge license taxes: Sec. 1021. Duties with respect to road taxes: Secs. 904, 905.

To enter sales and leases of State land or timber in the abstract books: Sec. 1571. To preserve duplicate abstracts of State lands: Sec. 1571.

To keep accounts with school districts: Sec. 606. Redemption of school district bonds: Sec. 647. To pay interest on school district bonds: Sec. 648.

To keep proceeds of sale of unclaimed property: Sec. 1548.

To issue peddlers' licenses and keep peddlers' deposits: Sec. 1530.

To approve and file bonds of lumber inspectors: Sec. 1496.

Settlement with road overseer: Sec. 914.

To tender amount of award to owner of toll roads on the same being taken over by the county: Sec. 1002.

To keep funds of good roads districts: Secs. 1054, 1055.

Apportionment of forest reserve fund: Sec. 122.

Duties with respect to drainage district funds: Secs. 2470, 2474, 2475, 2476, 2477.

State Examiner may require a statement of accounts: Sec. 174.

Receipt of Money.

Sec. 1992. He must receive no money into the treasury unless accompanied by the certificate of the auditor.

Historical: Rev. St. 1887, Sec. 1841.
California Legislation: Same with additional provision: Pol. Code 1872,

Sec. 4145; Deering's Code, ib.; Kerr's Code, ib.

Treasurer Must Receipt for Money.

Sec. 1993. When any money is paid to the county treasurer he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county auditor, who must charge the treasurer therewith and give the person paying the same a receipt.

Historical: Rev. St. 1887, Sec. 1842.
See 1 Ter. Ses. (1864) 475, Sec. 113.

California Legislation: Same: Pol. Code 1872, Sec. 4146; Deering's Code, ib.; Kerr's Code, ib.

Action on Bond—Complaint: A complaint in an action on the county treasurer's bond for negligently receiving worthless checks in settlement

of the tax collector's accounts with the county, is insufficient where it merely alleges that the tax collector had delivered to the treasurer certain worthless checks on an insolvent bank, and fails to allege that the treasurer gave any receipt to the collector for the checks. *Bingham Co. v. Woodin* (1898) 6 Ida. 284; 55 Pac. 662.

Redemption of Warrants.

Sec. 1994. When a warrant is presented for payment, if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid", the date of payment and sign his name thereto.

Historical: Rev. St. 1887, Sec. 1843.
See 1 Ter. Ses. (1864) 475; Sec. 115.

California Legislation: Same: Pol. Code 1872, Sec. 4147; Deering's Code, ib.; Kerr's Code, ib.

Payment by Check: A county treasurer who deposits the public funds in an insolvent bank and issues checks

thereon in payment of outstanding warrants, which checks are not paid, does not discharge the indebtedness of the county evidenced by the warrants, and the holders of the warrants may recover the money due thereon from the county. *Green v. Custer Co.* (1902) 8 Ida. 721; 71 Pac. 115.

Warrants Not Paid for Want of Funds.

Sec. 1995. When any warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must indorse thereon "Not paid for want of funds," annexing the date of presentation and sign his name thereto; and from that time until paid the warrant bears seven per cent per annum interest.

Historical: Rev. St. 1887, Sec. 1844.
See 1 Ter. Ses. (1864) 475, Sec. 116.

California Legislation: Same: Pol.

Code 1872, Sec. 4148; Deering's Code, ib.; Kerr's Code, ib.

County Warrant Bulletin.

Sec. 1996. The county treasurer shall provide himself, at the expense of the county, with a bulletin board, to be not less than twenty inches wide and thirty inches long, to be painted black and across the top of which shall be painted, in white "block" letters, not less than two inches high, the words "County Warrant Bulletin." It shall be the duty of the said treasurer to keep such bulletin conspicuously, securely and permanently in place at the front door of his office, and thereupon to post, in a manner which will insure continuous notice for not less than sixty days, all notices issued by him, whether written or printed, calling for the presentation of county warrants for payment.

Historical: Laws 1899, 434, Sec. 1.

Notice of Payment of Warrants.

Sec. 1997. Whenever there is an amount to the credit of any county fund, as shown by the books of the county treasurer, sufficient to pay the warrant or warrants next entitled to payment therefrom, the county treasurer shall immediately post at the door of his office, as provided in the preceding section, a notice that such warrant or warrants will be paid on presentation, stating therein the number and series of any such warrants and the fund or funds upon which drawn.

Historical: Laws 1899, 434, Sec. 2.

Same: Publication of Notice.

Sec. 1998. On the first Monday of each month, if there is a sufficient amount to the credit of any county fund or funds to pay the warrant or warrants, next entitled to be paid therefrom, and whenever it shall appear from the books of the county treasurer that there is to the credit of any county fund or funds against which there are outstanding warrants unpaid, the sum of one thousand dollars, available for the payment of said warrants, the said treasurer shall cause to be published in the manner and form required by law, notice that the warrant or warrants next entitled to be paid therefrom will be paid upon presentation. All warrants which have theretofore been called by posting, as provided in the preceding section, and which remain unpaid at the time of publishing such notice, shall be included in such published notice; and, after such publication, the interest thereon shall cease after the time now provided by law, but not before.

Historical: Laws 1899, 434, Sec. 3.

Penalty for Paying Unnecessary Interest.

Sec. 1999. For all sums which are paid by the county treasurer as interest upon any warrant or warrants, after the earliest date at which there were sufficient funds with which to have called and paid the same, such officer shall be liable upon his official bond; and for the wilful violation of any of the provisions of this and the three preceding sections, the said treasurer shall be deemed guilty of neglect to perform the official duties pertaining to his office, and shall be removed therefrom as provided by law.

Historical: Laws 1899, 434, Sec. 4.

Interest Noted on Warrant.

Sec. 2000. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest distinct from the principal.

Historical: Rev. St. 1887, Sec. 1849.
1 Ter. Ser. (1864) 475, Sec. 118.

Code 1872, Sec. 4153; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Monthly Settlements and Statements: Annual Settlement.

Sec. 2001. The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever

nature and kind, with the auditor, on the first Monday of each month. For the purpose of making such settlement, he must make out a statement under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must in such settlements, deposit all warrants redeemed by him and take the auditor's receipt therefor. He must also make a full settlement of all accounts with the auditor annually on the first Tuesday after the first Monday of January, in the presence of the commissioners, who have a supervisory control thereof.

Historical: Rev. St. 1887, Sec. 1850. "First Tuesday after the first Monday" inserted for "second Monday" to conform to Laws 1901, 233, Sec. 174.

California Legislation: Same except "first Monday" for "first Tuesday after

the first Monday", next to last line, and "supervisors" for "commissioners": Pol. Code 1872, Sec. 4154; Deering's Code, ib.; Kerr's Code, ib.

Quarterly Report.

Sec. 2002 Each county treasurer must make a detailed report at every regular meeting of the board of commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county may clearly and distinctly appear.

Historical: Rev. St. 1887, Sec. 1851.

California Legislation: Same except "supervisors" for "commissioners,"

line 2: Pol. Code 1872, Sec. 4155; Deering's Code, ib.; Kerr's Code, ib.

Neglect to Settle or Report.

Sec. 2003. If any county treasurer neglects or refuses to settle or report as required in the two preceding sections, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of commissioners must institute suits for the recovery thereof.

Historical: Rev. St. 1887, Sec. 1852.

California Legislation: Same except "supervisors" for "commissioners":

Pol. Code 1872, Sec. 4156; Deering's Code, ib.; Kerr's Code, ib.

Action Against Defaulting Prosecuting Attorney.

Sec. 2004. If the prosecuting attorney refuses or neglects to account for any pay over money received by him as required by law, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover, in such action, in addition to the amount so received, fifty per cent thereon by way of damages.

Historical: Rev. St. 1887, Sec. 1853. "Prosecuting attorney" for "district attorney."

California Legislation: Same except

"the fifth subdivision of Section 4256" for "law," line 2: Pol. Code 1872, Sec. 4157; Deering's Code, ib.; Kerr's Code, ib.

Action Against Coroner or Justice.

Sec. 2005. If the coroner, or any justice of the peace acting as

coroner, fails to deliver to the treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the legal representative of the decedent as required by law, the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

Historical: Rev. St. 1887, Sec. 1854.
1 Ter. Ses. (1864) 475, Sec. 145.

California Legislation: Same except "by the public administrator or other legal representative" for "by the legal

representative," line 4, and "Section 4287" for "law," line 5; Pol. Code 1872, Sec. 4158; Deering's Code, ib.; Kerr's Code, ib.

Disposal of Money or Property Found on Dead Body.

Sec. 2006. The treasurer, upon receiving from the coroner or justice acting as coroner money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must, within thirty days, sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

Historical: Rev. St. 1887, Sec. 1855.
1 Ter. Ses. (1864) 475, Sec. 146.

California Legislation: Same: Pol.

Code 1872, Sec. 4159; Deering's Code, ib.; Kerr's Code, ib.

Same: Demand by Legal Representatives.

Sec. 2007. If the money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of commissioners.

Historical: Rev. St. 1887, Sec. 1856.
1 Ter. Ses. (1864) 475, Sec. 147.

California Legislation: Same except

"supervisors" for "commissioners": Pol. Code 1872, Sec. 4160; Deering's Code, ib.; Kerr's Code, ib.

Custody of County Money.

Sec. 2008. The county treasurer must keep all moneys belonging to this State, or to any county of this State in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the sake keeping of the public moneys.

Historical: Rev. St. 1887, Sec. 1857.

California Legislation: Same: Pol. Code 1872, Sec. 4161; Deering's Code, ib.; Kerr's Code, ib.

Liability for General Deposits: The act of the county treasurer in deposit-

ing county money in a bank on general deposit, does not afford an action on his bond in the absence of any showing of loss to the county. *Bingham Co. v. Woodin* (1898) 6 Ida. 284; 55 Pac. 662.

Suspension of Treasurer Pending Action.

Sec. 2009. Whenever an action based upon official misconduct is commenced against any county treasurer, the commissioners may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

Historical: Rev. St. 1887, Sec. 1858.
See 1 Ter. Ses. (1864) 475, Sec. 122.

California Legislation: Same except

"supervisors" for "commissioners":
Pol. Code 1872, Sec. 4162; Deering's
Code, ib.; Kerr's Code, ib.

Delivery of Money and Papers After Death.

Sec. 2010. In case of the death of any county treasurer his legal representatives must deliver up all official moneys, books, accounts, papers and documents which come into their possession.

Historical: Rev. St. 1887, Sec. 1859.
See 1 Ter. Ses. (1864) 475, Sec. 123.
Omitting the last sentence relative to
percentage of treasurers, as repealed
by Laws 1899, 405 (Code Secs. 2115-
2120), abolishing the fee system.

California Legislation: Same: Pol.
Code 1872, Sec. 4163; Deering's Code,
ib.; Kerr's Code, ib.

Inspection of Books.

Sec. 2011. The books, accounts and vouchers of the treasurer are at all times subject to the inspection and examination of the board of commissioners and grand jury.

Historical: Rev. St. 1887, Sec. 1860.
See 1 Ter. Ses. (1864) 475, Sec. 114.

California Legislation: Same except

"supervisors" for "commissioners":
Pol. Code 1872, Sec. 4164; Deering's
Code, ib.; Kerr's Code, ib.

Examination of Books.

Sec. 2012. The treasurer must permit the county commissioners and auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting.

Historical: Rev. St. 1887, Sec. 1861.
See 1 Ter. Ses. (1864) 475, Sec. 114.

California Legislation: Same except

"judge" for "commissioners", line 1:
Pol. Code 1872, Sec. 4165; Deering's
Code, ib.; Kerr's Code, ib.

Deposit of County Funds.

Sec. 2013. The county treasurer of each and every county of the State of Idaho shall deposit, and at all times keep on deposit, for safe keeping, in the State, national or private banks doing business in the county, of approved and responsible standing, the amount of moneys in his hands held by him as such county treasurer. And such bank, located in the county, may apply for the privilege of keeping on deposit such moneys or some part thereof. All such deposits shall be subject to payments when demanded by the county treasurer on his check, and any bank receiving and holding any such deposit as aforesaid, shall be required to pay, and shall pay, to the county, for the privilege of holding the same, not less than two per cent per annum upon the amount so deposited as herein provided; subject, also, to such regulations as are imposed by law and the rules adopted by the county treasurer for receiving and holding such deposits. The treasurer shall not give preference to any one or more banks applying to be made such depositories, as in this article provided, in the amount he may so deposit, but shall keep deposited with each of the said banks such part of said moneys, so on deposit, as the par value of securities, or the penalty in the bond furnished by said bank, is a part of the sum of all of the penalties of all the bonds, and the par value of all the securities, so furnished by the banks so applying to be made such depositories, so that such moneys may at all times be deposited with said banks pro rata as to the penalty of the bond, or

the par value of the securities furnished by them, respectively: *Provided*, The treasurer shall not have on deposit in any bank at any time more than the par value of the securities, nor more than three-fourths of the amount of the bond given by said bank: *Provided further*, That where a surety bond in some responsible surety company shall be furnished to the satisfaction and approval of the board of county commissioners, as hereinafter provided, the amount on deposit may equal, but shall not exceed, ninety per cent of the penalty of the bond; but in no case shall the amount deposited by him in any bank exceed one hundred per cent of its paid-up capital stock. The board of county commissioners of the several counties of this State shall, at their regular meeting in April, fix the rate of interest to be paid on such deposits, which shall be not less than the rate hereinbefore, in this section, established, and which rates, when so established, shall not be changed for such period of one year.

Historical: Laws 1905, 99, Sec. 1;
amended Laws 1907, 328, Sec. 1.

Premium to Be Paid by Banks: Statements.

Sec. 2014. The amount to be paid by any and all banks, under the provision of this article, for the privilege of keeping such public funds on deposit, shall be computed on the average daily balance of the public moneys kept on deposit therewith, and shall be credited and paid to the county quarterly on the first days of January, April, July and October of each year, and such depository shall, quarterly, on the days aforesaid, render a statement, in duplicate, to the treasurer and auditor, showing the amounts so credited. The treasurer shall require, and it is hereby made the duty of every such depository to keep, accurate accounts of all such moneys deposited with it, showing the amount deposited and when deposited, and to render, at the beginning of each and every month, to the treasurer and auditor a statement, in duplicate, showing the daily balance of the county moneys held by it during the month next preceding, and the interest thereon; and all sums paid to the county for the privilege of keeping said moneys on deposit as aforesaid, shall be credited by the treasurer to the account of the current expense fund. The treasurer shall not make such deposits in any bank or banks other than those which shall have complied with the provisions of this article.

Historical: Laws 1905, 99, Sec. 2.

Bonds of Depositories: Sureties: Deposits Outside of County.

Sec. 2015. For the security of funds so deposited under the provisions of this article, the county treasurer shall require all such depositories to deposit securities of the kind and character hereinafter described, or to give bonds for the payment of such deposits and the interest thereon. Said bonds, when given, shall run to the State of Idaho, and, together with the securities offered, are to be approved by the board of county commissioners. Said bonds shall be conditioned that the depository shall, at the beginning of each and every month, render to the treasurer and auditor a statement, in duplicate, showing the daily balance and the amount of money of the county held by it during the month preceding, and the amount

of the interest thereon, and for the payment of the said deposit and the interest thereon, as hereinbefore provided, when demanded by the county treasurer on his check at any time, and generally, to do and perform whatever may be required by the provisions of this article, and for a faithful discharge of the trust reposed in such depository. The said bonds shall be in substance the same as those provided to be given by banks seeking to be made depositories of State funds, the necessary changes being made therein.

No person in any way connected with any bank seeking to be made a depository, as owner, part owner, officer or stockholder, shall be accepted as a surety on any bond to be given by such bank under the provisions of this article, for a greater amount than the assessed value of his real and personal property situated in the county, other than bank and corporation stocks, money, notes and bonds, as shown by the last preceding annual assessment thereof, and deducting therefrom any and all liens and encumbrances thereon, and it shall be the duty of the county commissioners, before accepting any such bond, to carefully examine the assessment rolls and the records and such other sources of information as may be available to ascertain the real financial worth of such surety or sureties. Where the penalty of the bond exceeds ten thousand dollars, each surety may become severally liable for any sum less than the whole amount that he may specify that he stands for, and in all such cases if there should be any default of the principal, each surety shall be held for the whole amount that he agrees to stand for, but may compel his solvent co-sureties to contribute pro rata in the event that he pays for more than his share: *Provided*, That in all such cases the aggregate amount for which all the sureties stand good must be at least twenty-five per cent more than the penalty of the bond. Sureties shall be required to justify in double the amount for which each, respectively, becomes liable on said bond; in all other respects the justification of sureties shall be as required by Section 4934 of these Codes. All bonds and securities, after approval, shall be deposited with and held by the county auditor. It shall be the duty of the prosecuting attorney to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of this article. Said bonds shall be deposited with the county auditor.

Where there are no banks in said county, or where the banks in said county neglect or refuse to apply to be made depositories, as provided in this article, the said moneys shall be deposited in banks outside of the county, but within the State of Idaho, having sufficient capital stock, under the same conditions and terms as if in the county; and where the bank or banks in the county have not sufficient capital stock to receive said moneys under this article, moneys to the extent of one hundred per cent of the paid-up capital stock of said bank or banks, applying to be made depositories under the provisions of this article, shall be deposited with the said bank or banks in the county, and the moneys remaining shall be deposited in banks outside of the county as is hereinbefore in this section provided.

Special Deposits.

Sec. 2016. It shall be lawful for the treasurer, until such time as the county shall provide a vault for the use of the county treasurer, to deposit any funds in his hands not deposited under the provisions of this article on special deposit with such banks of approved standing and responsibility within this State as will charge the least amount for the services of keeping such funds on such special deposit; the expense for such service to be borne by the county making such deposits, and claims therefor to be approved and allowed out of the current expense fund of the county.

Historical: Laws 1905, 99, Sec. 4.

Definitions.

Sec. 2017. The word "bank" or "banks" whenever used in this article shall be held to include trust companies, and the word "bonds" to include bonds furnished by surety companies authorized and qualified to do business in this State. The word "security" or securities" shall be construed to include:

(a) United States bonds or obligations, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including the bonds of the District of Columbia.

(b) Bonds of the State of Idaho, or those for which the faith of the State of Idaho is pledged, or for which the State of Idaho is ultimately liable.

(c) Bonds of the several counties, cities, villages, towns and school districts of the State of Idaho; warrants of the State of Idaho or warrants or interest bearing obligations of any county or city of the State of Idaho issued pursuant to the authority of any law of the State of Idaho for the payment of which the faith and credit of said county or city issuing them are pledged.

(d) Bonds of any association, corporation or company approved by the board of governors of the New York Stock Exchange and listed on the New York Stock Exchange.

No securities shall be approved unless their market value shall equal their par value, nor where there has been default within three years in the payment of the principal or interest of any obligation issued by the same maker.

Upon payment to the county of the deposits and accrued interest for which security was given, it shall be returned to the bank furnishing the same, and when such securities can be conveniently segregated, the amount thereof may be reduced in proportion as such deposits shall be reduced or repaid to the county.

Historical: Laws 1905, 99, Sec. 5;
amended Laws 1907, 328, Sec. 3.

Investigation of Security: Examination of Books: Report.

Sec. 2018. All personal bonds shall be investigated and the sufficiency of the same or the sureties thereon determined, as often as once every six months, and they shall be renewed every two years. The board of county commissioners may cause an investigation to be made at any time to ascertain the sufficiency of any bond or security

offered or given under this article, and to require new or additional security whenever in their judgment the safety of any deposit of county moneys under this article requires it: and such deposit shall be withdrawn unless such new or additional security be given. Any expense incurred in carrying out the provisions of this article shall be audited by the board of county commissioners, and, when allowed, paid out of the current expense fund of the county. The county treasurer shall not be liable personally, or upon his official bond, for any moneys that may be lost by reason of the failure or insolvency of any bank which becomes a depository under this article. The board of county commissioners, or any person authorized by them in writing, may, during business hours, in the presence of the treasurer or his deputy or clerk, inspect and examine the books of account in the office of the treasurer, and all contracts, writings, securities and other papers belonging to the county or pertaining to the business thereof, held by the treasurer, and may inspect and count the moneys belonging to the county and the several funds thereof in the custody of the treasurer; and it is hereby made the duty of the treasurer to furnish all reasonable facilities for the purpose.

It is the duty of every county treasurer to file a report in writing, verified by his affidavit, with the county auditor on the last business day of each and every month, showing exactly how much cash he has in the treasury and in what bank or banks deposited, and if in more than one, how much in each, which reports shall be carefully examined by the board of county commissioners at the next regular session following the filing of the same, and compared by them with the books of the treasurer at least twice a year, and if they shall find that the treasurer has wilfully made any false statement therein he may be suspended or removed from office.

Historical:: Laws 1905, 99, Sec. 6;
amended Laws 1907, 328, Sec. 4.

Offenses by Treasurer.

Sec. 2019. The making of profit, directly or indirectly, by the county treasurer, out of any money in the county treasury, belonging to the county, the custody of which the county treasurer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or the removal by the county treasurer or by his consent, of such moneys, or a part thereof, out of the vault or safe of the treasurer's department, after the same shall have been provided by the county, or out of any legal depository of such moneys, except for the payment of warrants, legally drawn, or for the purpose of depositing the same, under the provisions of this article, in banks which shall have qualified as depositories, shall constitute a felony, and, on conviction thereof, shall subject the treasurer to imprisonment in the State Penitentiary for a term of not exceeding two years, or a fine not exceeding five thousand dollars, or to both such fine and imprisonment, and the treasurer shall be liable upon his official bond for all profits realized from such unlawful use of such funds.

Historical: Laws 1905, 99, Sec. 7.

Same: Neglect.

Sec. 2020. If the county treasurer shall wilfully fail or refuse at any time to do or perform any act required of him by the provisions of this article relative to the deposit of county funds, he shall be guilty of a misdemeanor, and, upon conviction thereof, he shall be sentenced to pay a fine not exceeding five thousand dollars.

Historical: Laws 1905, 99, Sec. 8.
"The provisions of this article relative
to the deposit of county funds" in-

serted to confine the effect of the sec-
tion to the matter contemplated by
the act from which it is taken.

Bribery of Treasurer a Felony.

Sec. 2021. The offering, or giving, directly or indirectly, by any bank or depository, or by any officer or stockholder thereof, or by any other person or persons in its or their behalf, or by its or their knowledge, acquiescence or authority, or in its or their interest, to the county treasurer, or any gift, compensation, reward or inducement, with the intent or for the purpose of inducing said treasurer to deposit funds of the county in any bank contrary to any law of this State, shall constitute a felony, and shall, upon conviction thereof, subject the party or parties offending to imprisonment in the State Penitentiary for a period not exceeding two years, or to fine not exceeding five thousand dollars, or to both such fine and imprisonment.

Historical: Laws 1905, 99, Sec. 9.

Sale of Security for Default of Bank.

Sec. 2022. The county auditor is hereby authorized and empowered to sell any or all of the bonds or warrants, or both, that may be deposited as security for the deposit of any county funds in any depository under this article, at public or private sale, whenever there shall be a failure or refusal upon the part of any such bank, as a depository, to pay over the said funds of any part thereof upon the check or demand of the treasurer made on such bank. Notice of the sale of such bonds or warrants, under this article, shall be given for a period of thirty days in a newspaper published in the county seat of said county, and when the sale of bonds is made by the said auditor, either at public or private sale, under this article, and such bonds or warrants, or both, have been transferred by the auditor, the absolute ownership of such bonds and warrants vests in the purchaser or purchasers, upon the payment of the purchase money to the treasurer, and upon filing a duplicate receipt therefor with the auditor. Should there be any surplus after paying the amount due the county, and expenses of sale, it shall be paid over to the bank making the deposit.

Historical: Laws 1905, 99, Sec. 10.

ARTICLE 4.
SHERIFF.

Section	Section
2023. Definitions of process and notice.	2026. Return is prima facie evidence.
2024. Duties of sheriff.	2027. Penalty for failure to return.
2025. Process returnable to another county.	2028. Refusal to levy execution.
	2029. Refusal to pay over money.

Section

2030. Liability for permitting an escape.
 2031. Same: For a rescue.
 2032. Same: No action after recapture.
 2033. Directions must be in writing.
 2034. Office deemed vacant when.
 2035. Apparently good process must be executed.
 2036. Must exhibit process.
 2037. Sheriff is court crier.
 2038. Service on sheriff.
 2039. Coroner to execute certain process.

Section

2040. Appointment of elisor.
 2041. Compensation for services to State.
 2042. Incarceration of sheriff on arrest.
 2043. Elisor has powers of sheriff.
 2044. Termination of sheriff's powers.
 2045. Delivery of property to successor.
 2046. Same: Written transfer and receipt.
 2047. Completion of process.
 2048. Refusal to deliver property.

Definitions of Powers and Notice.

Sec. 2023. "Process" as used in this article includes all writs, warrants, summons and orders of courts of justice or judicial officers.

"Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board or officer, or when required by law to be served independently of such proceeding.

Historical: Rev. St. 1887, Sec. 1870.

California Legislation: Same: Pol. Code 1872, Sec. 4175; Deering's Code, ib.; Kerr's Code, ib.

Definition of Process: This section does not name all writings that may be denominated "process," but that

term includes other papers not therein named, such as affidavit and notice for foreclosure of chattel mortgages under Rev. St. Sec. 3391 (Code Sec. 3413). Blumaur-Frank Drg. Co. v. Branstetter (1895) 4 Ida. 557; 43 Pac. 575.

Duties of Sheriff.

Sec. 2024. The sheriff must:

1. Preserve the peace;
2. Arrest and take before the nearest magistrate for examination, all persons who attempt to commit or who have committed a public offense;
3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge;
4. Attend all courts, except justices' and probate courts, at their respective terms held within his county, and obey their lawful orders and directions;
5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;
6. Take charge of and keep the county jail and the prisoners therein;
7. Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception;
8. Serve all process and notices in the manner prescribed by law;
9. Certify under his hand upon process or notices the manner and time of service, or if he fails to make service, the reasons of his failure, and return the same without delay;
10. Perform such other duties as are required of him by law.

Historical: Rev. St. 1887, Sec. 1871, and 1888, subd. 10 comprises Sec. 1888. See 1 Ter. Ses. (1864) 475, Secs. 3 to 6.

California Legislation: Same except "justices", probate and police courts" for "justices' and probate courts," Subd. 4: Pol. Code 1872, Sec. 4176; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Ineligible to succeed himself: Const. Art. 18, Sec. 6. May be empowered by commissioners to appoint deputies: Art. 18, Sec. 6.

To collect liquor licenses: Sec. 1508. To complain of violations of the liquor law: Sec. 1526.

To sell stallions taken up for running at large: Sec. 1286. To prosecute persons permitting stock to run at large in town: Sec. 1290.

Sales of land entered under the Carey act on foreclosure of water contracts: Sec. 1629.

Sheriff of Ada County to serve subpoenas for abstracts issued by State Board of Equalization: Sec. 1704.

To serve subpoenas on officers failing to make reports or to transmit funds: Sec. 281b.

To sell unclaimed floating timber: Sec. 869.

To impound diseased animals and slaughter the same on order of justice of the peace: Sec. 1215.

To summon judges of election to appear before the county board of canvassers: Sec. 448.

To take possession of the county treasurer's office in case of vacancy: Sec. 330.

Duties in foreclosing chattel mortgages by notice and sale: Secs. 3413-3418.

To draw water from dams pursuant to orders of the District Court: Sec. 155.

Duties in civil and criminal actions: See Code of Civil Procedure and Penal Code.

Cited: Eakin v. Nez Perces Co. (1894) 4 Ida. 131; 36 Pac. 702.

Process Returnable to Another County.

Sec. 2025. When process or notices are returnable to another county, he may inclose such process or notice in an envelope addressed to the officer from whom the same emanated, and deposit it in the post office, prepaying postage.

Historical: Rev. St. 1887, Sec. 1872. See 1 Ter. Ses. (1864) 475, Sec. 7.

California Legislation: Same: Pol.

Code 1872, Sec. 4177; Deering's Code, ib.; Kerr's Code, ib.

Return Is Prima Facie Evidence.

Sec. 2026. The return of the sheriff upon process or notices, is prima facie evidence of the facts in such return stated.

Historical: Rev. St. 1887, Sec. 1873.

California Legislation: Same except "primary" for "prima facie," line

2: Pol. Code 1872, Sec. 4178; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Penalty for Failure to Return.

Sec. 2027. If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

Historical: Rev. St. 1887, Sec. 1874. See 1 Ter. Ses. (1864) 475, Sec. 6.

California Legislation: Same: Pol. Code 1872, Sec. 4179; Deering's Code, ib.; Kerr's Code, ib.

Liability of Sureties: The penalty

provided for in this section can only be recovered against the sheriff; his sureties are not liable therefor. Robinson v. Kinney (1892) 3 Ida. 479; 31 Pac. 815.

Refusal to Levy Execution.

Sec. 2028. If the sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property.

Historical: Rev. St. 1887, Sec. 1875.
See 1 Ter. Ses. (1864) 475, Sec. 8.

California Legislation: Same: Pol. Code 1872, Sec. 4180; Deering's Code, ib.; Kerr's Code, ib.

Cited: Blumaur-Frank Drg. Co. v. Branstetter (1895) 4 Ida. 557; 43 Pac. 575.

Refusal to Pay Over Money.

Sec. 2029. If he neglects or refuses to pay over, on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees) the amount thereof, with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand, may be recovered by such person.

Historical: Rev. St. 1887, Sec. 1876.
See 1 Ter. Ses. (1864) 475, Sec. 9.

California Legislation: Same: Pol. Code 1872, Sec. 4181; Deering's Code, ib.; Kerr's Code, ib.

Demand Necessary: In order to recover against the sheriff under this section it is incumbent upon the plaintiffs to allege and prove a de-

mand. Robinson v. Kinney (1892) 3 Ida. 479; 31 Pac. 815.

Liability of Sureties: A sheriff's sureties are liable for money which the sheriff has received under an execution and which he has neglected to pay to the person entitled thereto. Ib.

Liability for Permitting an Escape.

Sec. 2030. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation.

Historical: Rev. St. 1887, Sec. 1877.
1 Ter. Ses. (1864) 475, Sec. 33.

California Legislation: Same: Pol.

Code 1872, Sec. 4182; Deering's Code, ib.; Kerr's Code, ib.

Same: For a Rescue.

Sec. 2031. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

Historical: Rev. St. 1887, Sec. 1878.
See 1 Ter. Ses. (1864) 475, Sec. 34.

California Legislation: Same: Pol.

Code 1872, Sec. 4183; Deering's Code, ib.; Kerr's Code, ib.

Same: No Action After Recapture.

Sec. 2032. An action cannot be maintained against the sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff.

Historical: Rev. St. 1887, Sec. 1879.
1 Ter. Ses. (1864) 475, Sec. 35.

California Legislation: Same: Pol.

Code 1872, Sec. 4184; Deering's Code, ib.; Kerr's Code. ib.

Directions Must Be in Writing.

Sec. 2033. No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney.

Historical: Rev. St. 1887, Sec. 1880.
1 Ter. Ses. (1864) 475, Sec. 45.

California Legislation: Same: Pol.

Code 1872, Sec. 4185; Deering's Code, ib.; Kerr's Code, ib.

Office Deemed Vacant When.

Sec. 2034. When the sheriff is committed under an execution or commitment, for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

Historical: Rev. St. 1887, Sec. 1881.
1 Ter. Ses. (1864) 475, Sec. 46.

California Legislation: Same: Pol.

Code 1872, Sec. 4186; Deering's Code, ib.; Kerr's Code, ib.

Apparently Good Process Must Be Executed.

Sec. 2035. A sheriff, or other ministerial officer, is justified in the execution of, and must execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

Historical: Rev. St. 1887, Sec. 1882.
1 Ter. Ses. (1864) 475, Sec. 48.

California Legislation: Same: Pol.
Code 1872, Sec. 4187; Deering's Code, ib.; Kerr's Code, ib.

Justification Under Process: Process good on its face protects the sheriff even though made on a void or irregular judgment; such process includes affidavit and notice for the foreclosure of a chattel mortgage under Rev. St. Sec. 3390 (Code Sec. 3413). *Blumaur-Frank Drg. Co. v.*

Branstetter (1895) 4 Ida. 557; 43 Pac. 575.

A ministerial officer may justify in the execution of process regular on its face and issued by competent authority. *Coombs v. Collins* (1899) 6 Ida. 536; 57 Pac. 310.

An officer who seeks to justify a seizure of chattels under a writ of attachment must show a valid writ and the existence of all the jurisdictional facts that must exist before the writ can issue. *Beckstead v. Griffith* (1906) 11 Ida. 738; 83 Pac. 764.

Must Exhibit Process.

Sec. 2036. The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

Historical: Rev. St. 1887, Sec. 1883.
1 Ter. Ses. (1864) 475, Sec. 49.

California Legislation: Same: Pol.

Code 1872, Sec. 4188; Deering's Code, ib.; Kerr's Code, ib.

Sheriff is Court Crier.

Sec. 2037. The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses, and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

Historical: Rev. St. 1887, Sec. 1884.
See 1 Ter. Ses. (1864) 475, Sec. 50.

California Legislation: Same: Pol.

Code 1872, Sec. 4189; Deering's Code, ib.; Kerr's Code, ib.

Service on Sheriff.

Sec. 2038. Service of a paper, other than process, upon the sheriff, may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

Historical: Rev. St. 1887, Sec. 1885.
1 Ter. Ses. (1864) 475, Sec. 12.

California Legislation: Same: Pol.

Code 1872, Sec. 4190; Deering's Code, ib.; Kerr's Code, ib.

Coroner to Execute Certain Process.

Sec. 2039. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

Historical: Rev. St. 1887, Sec. 1886.
1 Ter. Ses. (1864) 475, Sec. 54.

California Legislation: Same: Pol.

Code 1872, Sec. 4191; Deering's Code, ib.; Kerr's Code, ib.

Appointment of Elisor.

Sec. 2040. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the court, the judge thereof, or a probate judge, and denominated an elisor in the following cases:

1. When the sheriff and coroner are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

When the process is delivered to an elisor he must execute and return it in the same manner as the sheriff is required to execute similar process.

Historical: Rev. St. 1887, Sec. 1887.
1 Ter. Ses. (1864) 475, Secs. 57, 58.

California Legislation: Same except "county" for "probate," line 3; Pol. Code 1872, Sec. 4192; Deering's Code, ib.; Kerr's Code, ib.

Appointment of Elisor—Discretionary: The granting or refusing of an application for the appointment of an elisor is within the discretion of the court. *State v. Hendel* (1894) 4 Ida. 88; 35 Pac. 836.

Same—When Not Authorized: The appointment of an elisor to take charge of a jury during the progress of a criminal trial is not within this section. *Ib.*

Disqualification of Sheriff: Where the sheriff is disqualified to serve jury process an elisor should be appointed, and neither the sheriff nor his deputies should be permitted to serve the process. *State v. Barber* (1907) 13 Ida. —; 88 Pac. 418.

Compensation for Services to State.

Sec. 2041. When the sheriff or other officer is legally required to perform a service in behalf of the people of this State, which is not chargeable to his county or private person, his account and claim for

compensation therefor must be filed with the Board of Examiners, who shall consider the same and report thereon to the Legislature, at its first session after the rendition of such service, for its action.

Historical: Rev. St. 1887, Sec. 1889.
(See 8 Ter. Ses. (1875) 543, Sec. 47.)
"Board of examiners, who shall con-

sider the same and report thereon"
inserted to conform to Const. Art. 4,
Sec. 18.

Incarceration of Sheriff on Arrest.

Sec. 2042. If the sheriff, on being arrested by a coroner, or if the sheriff or coroner on being arrested by an elisor, or if another person in an action in which both the sheriff and coroner are plaintiffs upon an order of arrest in a civil action, neglect to give bail or make a deposit of money instead thereof, or if the sheriff be arrested on execution against his body, or on a warrant of attachment, he or they must be confined in a house other than that of the sheriff, or the county jail, in the same manner as the sheriff is required to confine a prisoner in the county jail. The house in which he is thus confined thereupon becomes for that purpose the county jail.

Historical: Rev. St. 1887, Sec. 1890.
1 Ter. Ses. (1864) 475; Sec. 59.

Elisor Has Powers of Sheriff.

Sec. 2043. An elisor appointed to execute process and orders in the cases mentioned in this article, is invested with the powers, duties and responsibilities of the sheriff, in the execution of the process, or orders, and in every matter incidental thereto.

Historical: Rev. St. 1887, Sec. 1891.
1 Ter. Ses. (1864) 475, Sec. 60.

Termination of Sheriff's Powers.

Sec. 2044. When a new sheriff is elected, and has qualified and given the security required by law, the county recorder must give a certificate of that fact, under his seal of office, upon the service of which on the former sheriff his powers cease, except as otherwise provided in this article.

Historical: Rev. St. 1887, Sec. 1892.
1 Ter. Ses. (1864) 475, Sec. 36.

Delivery of Property to Successor.

Sec. 2045. Within three days after the service of the certificate upon the former sheriff, he must deliver to his successor:

1. The jail of the county, with its appurtenances, and the property of the county therein;
2. The prisoners then confined in the county jail;
3. The process, orders and other papers in his custody, authorizing or relating to the confinement of the prisoners;
4. All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed;
5. All executions, attachments and final process, except those which he has executed or has begun to execute, by the collection of money or a levy on property.

Historical: Rev. St. 1887, Sec. 1893.
1 Ter. Ses. (1864) 475, Sec. 37.

Same: Written Transfer and Receipt.

Sec. 2046. He must also, at the same time, deliver to the new sheriff a written transfer of the property, process, papers and prisoners delivered, specifying the process or order by which each prisoner delivered was committed and detained. The new sheriff must thereupon acknowledge, in writing on a duplicate of the transfer, the receipt of the property, process, papers and prisoners therein specified.

Historical: Rev. St. 1887, Sec. 1894.
1 Ter. Ses. (1864) 475, Sec. 38.

Completion of Process.

Sec. 2047. Notwithstanding the election and qualification of a new sheriff, the former sheriff must return all process and orders before and after judgment, which he has fully executed, and must complete the execution of all final process which he has begun to execute previous to the expiration of his term of office.

Historical: Rev. St. 1887, Sec. 1895.
1 Ter. Ses. (1864) 475, Sec. 39.

Refusal to Deliver Property.

Sec. 2048. If the former sheriff refuse or neglect to deliver to his successor the jail, process, papers and prisoners in his charge, the new sheriff may, notwithstanding, take possession of the jail, and of the prisoners confined therein, and the probate court, or the probate judge, may, upon application, order the delivery of the process and papers.

Historical: Rev. St. 1887, Sec. 1896.
1 Ter. Ses. (1864) 475, Sec. 40.

ARTICLE 5.**CLERK OF THE DISTRICT COURT.****Section**

2049. Duties.

2050. Attendance on court.

Section

2051. Liability for neglect or omission.

Duties of Clerk.

Sec. 2049. The clerk of the District Court must perform such duties as are prescribed in the Code of Civil Procedure and in the Penal Code, and such duties as may be required of him by the rules and practice of the court.

Historical: Rev. St. 1887, Sec. 270. Omitting "for each judicial district" as the clerks are county officers under Const. Art. 18, Sec. 6. The power to appoint deputies conferred by Rev. St. Sec. 271, is conferred by the same section of the Constitution, and as the deputy referred to in Sec. 271, was authorized in view of the system of but one clerk to each district, that section is treated as superseded. Secs. 1975 and 1979 of these Codes also preserve the power of the clerk to appoint a deputy.

Cross Reference: Election and term of office: Const. Art. 5, Sec. 16. May be empowered by commissioners to

appoint deputies and clerical assistants: Const. Art. 18, Sec. 6. Filing sheriff's return of foreclosure of mortgage by notice and sale: Sec. 3417. Filing water master's bond: Sec. 3275. May take acknowledgments: Sec. 3124. To certify lis pendens to county recorder in action on official bonds: Sec. 314. To report to the State Treasurer names of attorneys admitted to practice: Sec. 840. To record papers in labor arbitration: Sec. 1435. For duties in civil and criminal cases and in respect to court proceedings generally, see Code of Civil Procedure and Penal Code.

Attendance on Court.

Sec. 2050. The clerk must in person or by deputy attend every term of the District Court held in his county. All acts done and process issued by the deputy must be in the name of his principal.

Historical: Rev. St. 1887, Secs. 272, 273. Omitting the provisions of Sec. 272 requiring the deputy to reside at the county seat of the county for which he is appointed and to perform all the duties of the office in the absence of his principal. These provisions related solely to the old

system under which the clerk was a district officer and was required for that reason to have a deputy in each county. As there is now a clerk resident of the county seat in each county, the reason for the omitted provisions no longer exists.

Liability for Neglect or Omission.

Sec. 2051. For any wrongful act or omission to perform any duty imposed by law, by himself or his deputy, the clerk is liable on his official bond to any person injured.

Historical: Rev. St. 1887, Sec. 275.
See 1 Ter. Ses. (1864) 475, Sec. 100.

ARTICLE 6.**AUDITOR.****Section**

- 2052. Auditor to draw warrants.
- 2053. Requirements of warrants.
- 2054. Settlement of debts to county.
- 2055. Account with treasurer.
- 2056. Warrant blanks: Fractional warrants: Registration.

Section

- 2057. Joint statement by auditor and treasurer.
- 2058. Annual statement of financial condition of county.
- 2059. Other duties.
- 2060. Filing and recording bond.

Auditor to Draw Warrants.

Sec. 2052. The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto, in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the board of commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal.

Historical: Rev. St. 1887, Sec. 2005.
See 8 Ter. Ses. (1875) 556, Sec. 26.

California Legislation: Same except "supervisors" for "commissioners": Pol. Code 1872, Sec. 4215; Deering's Code, ib.; Kerr's Code, ib.

Sums Allowed by Law: The claim of a publisher for printing the delin-

quent tax list pursuant to contract with the tax collector, is not a sum "fixed by law" for which the auditor must draw his warrant without the claim being first allowed by the board of commissioners. *Jolly v. Woodward* (1895) 4 Ida. 496; 42 Pac. 512.

Requirements of Warrants.

Sec. 2053. All warrants must distinctly specify the liability for which they are drawn, and when it accrued.

Historical: Rev. St. 1887, Sec. 2006.

California Legislation: Same: Pol. Code 1872, Sec. 4216; Deering's Code, ib.; Kerr's Code, ib.

Cited: *McNutt v. Lemhi Co.* (1906) 12 Ida. 63; 84 Pac. 1054.

Settlement of Debts to County.

Sec. 2054. The auditor must examine and settle the accounts of

all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor, give to such person a discharge and charge the treasurer with the amount received by him.

Historical: Rev. St. 1887, Sec. 2007.

California Legislation: Same: Pol.

Code 1872, Sec. 4217; Deering's Code, ib.; Kerr's Code, ib.

Accounts With Treasurer.

Sec. 2055. The auditor must keep accounts current with the treasurer, and when any person deposits with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor must file such receipt and charge the treasurer with the amount thereof.

Historical: Rev. St. 1887, Sec. 2008.
8 Ter. Ses. (1864) 556, Sec. 25.

California Legislation: Same: Pol.

Code 1872, Sec. 4218; Deering's Code, ib.; Kerr's Code, ib.

Warrant Blanks: Fractional Warrants: Registration.

Sec. 2056. The auditor shall have prepared, in separate series, warrant blanks for each year. They must be numbered consecutively, and must show the year against the revenue of which they are to be issued. He shall begin the use of a new series of warrants on the second Monday in April of each year. All warrants issued by the auditor shall be upon the warrant blanks of the series for the year chargeable with the amount for which such warrant is issued, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn must be stated thereon. When the amount for which a warrant is to be drawn is greater than the sum of two hundred dollars, the auditor shall issue therefor warrants in sums of two hundred dollars or fraction thereof, unless there is cash in the county treasury in the fund against which such warrant is drawn for the payment of the same on presentation. All warrants must, at the time they are issued, be registered by the auditor.

Historical: Rev. St. 1887, Sec. 2009;
amended Laws 1899, 397, Sec. 1.

Joint Statement by Auditor and Treasurer.

Sec. 2057. The auditor and treasurer of each county must, on the second Mondays in January, April, July and October, make a joint statement to the board of commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury; the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; the total amount of warrants drawn and unpaid; accounts or claims audited, or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county. Said auditor and treasurer shall cause to be published a summary of said statements in some newspaper published in the county.

Historical: Rev. St. 1887, Sec. 2010; amended Laws 1895, 13, Sec. 1; re-enacted Laws 1899, 233, Sec. 1.

California Legislation: Similar: Pol. Code 1872, Sec. 4223; Deering's Code, ib.; Kerr's Code, ib.

Annual Statement of Financial Condition of County.

Sec. 2058. Every county auditor must, on or before the second Monday in April of each year, prepare, in duplicate, an exact and full statement, under oath, of the financial condition of his county for the fiscal year last preceding, one of which statements shall be filed in the office of the State Auditor, and the other with the board of county commissioners of the county.

Such statement must clearly set forth the following: The total assessed valuation of the county for each year; the amount of the tax levy on each one hundred dollars' valuation for each several purpose for which levied, stating it, and the total amount of the tax levy for each year. Therefrom shall be deducted the amount of double assessments, uncollected taxes or other credits ordered by the board of county commissioners to be given to the assessor on account of the roll for that year, showing the actual amount of revenue obtainable from such roll. Thereafter shall follow a statement in which shall be charged to each separate fund for which a levy was made, the proportion of net revenue, which may be obtained for such fund from such levy, and also all amounts ordered to be transferred thereto as provided by law, and also all revenues received for such year for each of said funds from sources other than property tax. There shall be credited against such revenue, shown in each fund, the amount allowed by the board of county commissioners, for which warrants have been ordered in such year, payable out of such fund; and which amounts shall be classified into warrants drawn and paid, warrants drawn and not paid, and warrants ordered and not drawn. There shall also be credited, in the statement of the appropriate funds, the amount paid on account of court orders; witness certificates; bonds and coupons; State, ad valorem, wagon road or other levies; current expense; road; bridges; general school purposes; interest on warrants paid; and generally, of all amounts paid out of the revenues of the year on account of each of the several funds, or transferred therefrom as provided by law, and the amount of delinquent tax due to each of such funds from the revenue of such year. The amount of cash in the treasury to the credit of each of such funds shall be credited therein; and said statement of each of said funds shall be balanced, as the condition thereof shall require by carrying to the credit of such account "surplus revenue over expenditures" or by debiting the account with "deficit of revenue to meet expenditures."

The auditor must, at the close of such report, make recapitulation of the total revenues, and expenditures for the year, and must compute the exact levy which would have been required or the net amount of the assessment roll for the year, to pay such expenditures and make a statement of the same.

A further showing shall be made in said statement, as follows: A statement of the actual amount and character of the bonded indebtedness of the county, if any, and the rate of interest thereon, together with the amount of the floating indebtedness, at the date of

said statement, and the amount of cash on hand in the treasury, applicable to the payment thereof. There shall be a detailed showing made in said statement as to the amount of expenditure made in said year in said county on account of current expense, other than for roads and bridges, wherein the total amount of such expenditures shall be debited and a credit made against the same for the several classified items of expenditure, in the amount shown by each.

Such classification and summarized details shall be as nearly as practicable as follows:

To total amount of expenditure for the year payable out of current expense fund \$.....

By care of poor: Medical attendance. \$.....; burials,; temporary aid, \$.....

By salary, or other compensation of each; actual expenses being a county charge; (showing separately under sheriff for deputies and jailers; board and care of prisoners) office expenses; blanks; stationery; furniture; and supplies, amount of each, \$.....

District Court: By defense criminals, \$.....; witness fees, \$.....; juror fees, \$.....

Justice courts: By fees of justices of the peace, \$.....; constables, \$.....; jurors, \$.....

Court house: By merchandise, \$.....; repairs, \$.....; janitor, \$.....; fuel, \$....., etc., and generally, such a summarized detail as shall make a comprehensive statement of the full amount and nature of the expenditures in said fund, for the fiscal year included in said statement.

Historical: Laws 1901, 294, Sec. 1.

Other Duties.

Sec. 2059. The auditor must discharge such other duties as are required by law.

Historical: Rev. St. 1887, Sec. 2011.

California Legislation: Same: Pol. Code 1872, Sec. 4224; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: May be empowered by commissioners to appoint deputies and employ clerical assistance: Const. Art. 18, Sec. 6.

Duties in relation to property taxes: To file copy of tax levy: Sec. 1647; to prepare abstract of assessment: Sec. 1701; to enter changes in assessment book required by State Board of Equalization: Sec. 1707; to apportion valuations of telegraph, telephone and railroad property: Sec. 1715; to file with county commissioners amount of State tax certified by State Auditor: Sec. 1716; to make corrections ordered by State Board of Equalization: Sec. 1720; to make affidavit of changes made: Sec. 1721; to prepare tabulated statements of valuations and transmit same to State Auditor: Secs. 1722, 1723; to deliver assessment book to tax collector: Sec. 1724; and charge amount of taxes to collector: Sec. 1725; to make settle-

ments with tax collector: Secs. 1741, 1742; to charge assessor for descriptions of property published: Sec. 1748; to cancel taxes accrued on property sold to county on payment thereof: Sec. 1755; to file tax certificates and compare the same with certificate book: Secs. 1760, 1761; to compare delinquent list with assessment book: Sec. 1768; to make final settlement with the collector: Sec. 1769; duties on redemption from tax sales: Secs. 1771, 1772, 1773; sale of tax certificates held by county: Secs. 1774, 1775; entry of names of assignees of certificates: Sec. 1776; to credit assessor with cancelled taxes: Sec. 1791; reports to State Auditor: Secs. 1799-1802; monthly settlements with tax collector: Sec. 1817; annual settlements with revenue officers: Sec. 1822.

Production of ballots and poll books in contested elections before the Legislature: Sec. 52. Return to auditor of ballots and poll books used in contested elections before the Legislature: Sec. 56. To file and preserve certificates of nominations for county

and precinct offices: Secs. 384, 387, 391. To provide official ballots and instruction cards for elections: Secs. 404-413. To act as clerk of board of commissioners in canvass of election returns: Sec. 448. To transmit copy of abstract of votes to Secretary of State and to file and record original abstract: Sec. 449. To prepare special ballots for county seat elections: Sec. 479. To transmit abstract of votes cast at special election to Secretary of State: Sec. 481. To file returns of bond elections in good road districts: Sec. 1054.

Duties with respect to poll taxes: Secs. 1842-1862. Duties with respect to road taxes: Secs. 902, 904. To issue ferry and toll bridge license: Sec. 1021. Duties with respect to collection of license taxes: Secs. 1828-1841. Duties in collecting taxes on net profits of mines: Sec. 1871. Addition to taxes against land of amounts

charged for services of water masters: Sec. 3281. Duties with respect to drainage district taxes: Secs. 2460-2468.

To draw warrants for school district moneys: Secs. 608, 611. To draw warrants for expenses incurred in holding teachers' institutes: Sec. 641.

Filing articles of mutual livestock insurance companies: Sec. 2925.

Filing pedigree of sires offered for service: Sec. 3453. Same: Issuance of certificate: Sec. 3454. Same: Filing statement of account for services rendered: Sec. 3455.

To file appointments made to fill vacancies: Sec. 328.

To issue toll bridge licenses: Sec. 1033.

Settlement with road overseer: Sec. 914.

To apportion assessment made by good road commissioners: Sec. 1056.

Filing and Recording Bond.

Sec. 2060. The bonds of the recorder and auditor must be filed by the probate judge in the probate court of the county, and a copy thereof duly recorded by the county recorder, and when so recorded, fully attested by the probate judge.

Historical: Rev. St. 1887, Sec. 2013. See 8 Ter. Ses. (1875) 556, Sec. 5.

California Legislation: See Pol.

Code 1872, Sec. 4122, Subds. 3 and 5; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 7.

RECORDER.

Section

- 2061. Books to be procured.
- 2062. Instruments to be recorded.
- 2063. Indexes to be kept.
- 2064. Indexing official deeds.
- 2065. Certificates of sale.
- 2066. Judgments affecting land.
- 2067. Same: Record imparts notice.
- 2068. Several indexes in same volume.
- 2069. Indorsement on instruments.
- 2070. Same: Book and page of record.

Section

- 2071. Number to be stamped on instrument.
- 2072. Reception book.
- 2073. Certificate of time of reception.
- 2074. Failure to properly record instrument.
- 2075. Recorder must make searches.
- 2076. Liability for neglect.
- 2077. Fees to be prepaid.
- 2078. Records open to inspection.

Books to Be Procured.

Sec. 2061. The Recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of commissioners. He has the custody of and must keep all books, records, maps, and papers deposited in his office.

Historical: Rev. St. 1887, Sec. 2023. See 1 Ter. Ses. (1864) 475, Sec. 64.

California Legislation: Same except "supervisors" for "commissioners," line 3: Pol. Code 1872, Sec. 4234; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: May be empowered

ed by commissioners to appoint deputies and clerical assistants: Const. Art. 18, Sec. 6.

To file oaths of county, district and precinct officers: Sec. 272; to file and record bonds of county and precinct officers: Sec. 284; to file bond and

oath of county superintendent: Sec. 585.

To file municipal annexation ordinances: Sec. 2173; to record city and village plats: Sec. 2301; to record and note vacation of plat: Secs. 2306, 2309; to sign and acknowledge plat where owners fail to do so: Sec. 2311.

May take acknowledgments: Sec. 3124; to certify to the authority of a justice of the peace taking an acknowledgment: Sec. 3135.

To file returns of property subject to transfer tax payable at a future date: Sec. 1878; to record transcripts of decrees relating to transfer taxes: Sec. 1890.

To file notice of lien for services of sires: Sec. 3451.

Record of lien claims: Sec. 5117. Record of liens upon sawlogs: Sec. 5133.

Issuance of certificate of incorporation: Sec. 2719.

To take charge of auctioneer's register on removal of auctioneer from the county: Sec. 1261.

Filing lis pendens: Sec. 4142; same: in actions on official bonds: Sec. 315.

To file determination of viewers in disputes as to partition fences: Sec. 1269.

To file forfeitures of State lands: Sec. 1581.

To file tax certificates: Sec. 1761.

Investments of proceeds of sale in partition to be made in the name of the recorder: Secs. 4597, 4599.

Record of inventory of wife's property: Sec. 2681; record of marriage settlement: Sec. 2691.

Record of independent defeasance accompanying mortgage: Sec. 3404.

Record of certificate of special partnership: Sec. 3339; same: record of affidavit of publication: Sec. 3343; same: record of certificate of change in partnership: Secs. 3357, 3358; same: record of notice of dissolution: Sec. 3359.

Record of declaration of homestead: Secs. 3200, 3204.

Amount of fees to be indorsed on recorded instruments: Sec. 3155.

Recording transfers: Secs. 3149-3163.

Custody of records and papers of deceased notary: Sec. 238.

To record certified copy of decree condemning lands for highway purposes: Sec. 930.

To record statements made by persons employing mechanics: Sec. 1446.

To attend before county board of equalization and furnish such information as may be required: Sec. 1698.

To file order organizing an irrigation district or changing the boundaries of the district: Secs. 2377, 2432, 2437.

Computation of fee for recording

articles and stock subscriptions for water users' association: Sec. 2843; to provide record books for water users' association: Sec. 2843.

Issuance of marriage licenses: Sec. 2629; fee for issuing marriage licenses: Sec. 2636; fee for certified copy of marriage, birth or death: Sec. 1092; to keep register of marriages, births and deaths: Secs. 1090-1092.

Certificate of acknowledgment of marginal discharge of mortgage: Sec. 3399; record of certificate of discharge of mortgage: Sec. 3401; fee for filing chattel mortgage: Sec. 3409; filing and indexing of chattel mortgages: Sec. 3409.

Record of articles of mutual cooperative insurance companies: Sec. 2906. Filing certificate of authority of surety companies: Sec. 2943. Filing resolution of shareholders of guaranty, title and trust companies adopting the law governing such companies: Sec. 2962.

To record brands: Sec. 1231; to keep brand books open for inspection: Sec. 1233; to send out notices of stray sheep when forwarded to him by the finder: Sec. 1233; fee for sending out notices of stray sheep: Sec. 1235. To record leases of livestock: Sec. 1263. Duties with reference to estrays: Sec. 1299. Fees in executing the estray law: Sec. 1299.

To record licenses of physicians: Sec. 1349. To record dentists' certificates: Sec. 1353. Fee for registering dentists' certificates: Sec. 1363. To record certificates of osteopaths: Sec. 1369. To record optometric certificates: Sec. 1378. Fee for recording optometric certificates: Sec. 1378.

Record of mining location notices: Sec. 3209. Record of affidavit of labor: Sec. 3211. Fee for administering and recording affidavit of labor on mining claim: Sec. 3211. Appointment of deputies for mining districts: Sec. 3215. Fee for recording affidavit accompanying mining location notice: Sec. 3217. Keep book of mining claims: Sec. 3218. Transmission to deputy of mining location notices: Sec. 3219. Record of notices of location of placer claims: Sec. 3222. Record of mining partnership contracts: Sec. 3371.

Copy of order granting application for license to construct a toll road must be recorded: Sec. 982. Description of proposed route and survey must be recorded: Secs. 984, 989; also certificate of completion of road: Sec. 996; and certificate of abandonment: Sec. 1000.

To record order granting authority to construct toll bridge: Sec. 1030. To file certificate of completion of bridge: Sec. 1033.

Instruments to Be Recorded.

Sec. 2062. He must, upon the payment of his fees for the same,

record separately, in large and well-bound separate books, in a fair hand:

1. Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved;
2. Certificates of marriage and marriage contracts;
3. Wills admitted to probate;
4. Official bonds;
5. Notices of mechanics' liens;
6. Transcripts of judgments which by law are made liens upon real estate;
7. Notices of attachments upon real estate;
8. Notices of the pendency of an action affecting real estate, the title thereto or possession thereof;
9. Instruments describing or relating to the separate property of married women;
10. Notices of pre-emption claims;
11. Such other writings as are required or permitted by law to be recorded.

Historical: Rev. St. 1887, Sec. 2024. See 1 Ter. Ses. (1864) 475, Sec. 70. Omitting Subd. 2, relative to the chattel mortgage book, which is superseded by Laws 1899, 121 (Code, Sec. 3409) requiring such instruments to be filed only.

California Legislation: Same with additional subdivisions: Pol. Code 1872, Sec. 4235; Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: For other instruments to be recorded see cross reference note to preceding section.

Indexes to Be Kept.

Sec. 2063. Every recorder must keep:

1. An index of deeds, grants, and transfers, labeled "Grantors", each page divided into four columns, headed respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants or transfers", and "Where recorded";
2. An index of deeds labeled "Grantees", each page divided into four columns, headed respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, or transfers", and "Where recorded";
3. Two indexes of mortgages, labeled respectively: "Mortgagors of real property", "Mortgagors of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagors", "Names of mortgagees," "Date of mortgages", "Where recorded", "When discharged";
4. Two indexes of "Mortgagees", labeled respectively: "Mortgagees of real property", "Mortgagees of personal property", with the pages thereof divided into five columns, headed respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgages", "Where recorded", "When discharged";
5. Two indexes of release of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagors", "Releases of mortgages of personal property—mortgagors", with the pages thereof divided into six columns, headed respectively: "Parties releasing", "To whom releases are given", "Date of releases", "Where releases are recorded", "Date of mortgages released", "Where mortgages released are recorded";

6. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagees", "Releases of mortgages of personal property—mortgagees", with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released", "Parties releasing", "Date of releases", "Where recorded", "Date of mortgages released", "Where mortgages released are recorded";

7. An index of powers of attorney, labeled "Powers of Attorney", each page divided into five columns headed respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers", "Date of recording", "Where powers are recorded";

8. An index of leases, labeled "Lessors", each page divided into four columns, headed respectively: "Names of lessors", "Names of lessees", "Date of leases", "When and where recorded";

9. An index of leases, labeled "Lessees", each page divided into four columns, headed respectively: "Names of lessees", "Names of lessors", "Date of leases", "When and where recorded";

10. An index of marriage certificates, labeled "Marriage certificates—Men", each page divided into six columns, headed respectively: "Men married", "To whom married", "When married", "By whom married", "Where married", "Where certificates are recorded";

11. An index of marriage certificates, labeled "Marriage certificates—Women", each page divided into six columns, headed respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", "Where certificates are recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of Mortgages and Leases—Assignors", each page divided into five columns, headed respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignments", "When and where recorded";

13. An index of assignments of mortgages and leases, labeled "Assignments of Mortgages and Leases—Assignees", each page divided into five columns, headed respectively: "Assignees", "Assignors", "Instruments assigned", "Date of assignments", "When and where recorded";

14. An index of wills, labeled "Wills", each page divided into four columns, headed respectively: "Names of testators", "Date of wills", "Date of probate", "When and where recorded";

15. An index of official bonds, labeled "Official Bonds", each page divided into five columns, headed respectively: "Names of officers", "Names of offices", "Date of bonds", "Amount of bonds", "When and where recorded";

16. An index of notices of mechanics' liens, labeled "Mechanics' Liens", each page divided into three columns, headed respectively: "Parties claiming liens", "Against whom claimed", "Notices, when and where recorded";

17. An index to transcripts of judgment, labeled "Transcripts of Judgments", each page divided into seven columns, headed respectively: "Judgment debtors", "Judgment creditors", "Amount of judgments", "Where recovered", "When recovered", "When transcript filed", "When judgment satisfied";

18. An index of attachments, labeled "Attachments", each page divided into six columns, headed respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When recorded", "Where recorded", "When attachments discharged";

19. An index of notices of the pendency of actions, labeled "Notices of actions", each page divided into three columns, headed respectively: "Parties to the actions", "Notices, when recorded", "Where recorded";

20. An index of the separate property of married women labeled "Separate property of married women", each page divided into five columns, headed respectively: "Names of married women", "Names of their husbands", "Nature of instruments recorded", "When recorded", "Where recorded";

21. An index of possessory claims, labeled "Possessory Claims", each page divided into five columns, headed respectively: "Claimants", "Notices", "When received", "Date of notices", "When and where recorded";

22. An index of homesteads, labeled "Homesteads", each page divided into five columns, headed respectively: "Claimants", "Date of declaration", "When and where recorded", "Abandonment", "When and where recorded";

23. An index of agreements and bonds affecting the title of real property, labeled: "Real Property Agreements", each page divided into four columns, headed respectively: "Vendors", "Vendees", "Date of agreement", "When and where recorded";

24. An index of mining claims, labeled "Mining Claims", each page divided into five columns, headed "Locators", "Name of claim", "Date of location", "When filed for record", "Where recorded";

25. An index of water rights, labeled "Water Rights", each page divided into four columns labeled "Locators", "Date of notice", "When filed for record", "Where recorded";

26. A general index of all papers to be entered as they are filed.

Historical: Rev. St. 1887, Sec. 2025.
See 1 Ter. Ses. (1864) 475, Sec. 72.

through Subd. 21, rest omitted: Pol.
Code 1872, Sec. 4236; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: Same

Indexing Official Deeds.

Sec. 2064. Deeds made by sheriffs, collectors, administrators, trustees and other officers, in their official capacity, shall be indexed by the recorder in the name of the owner of the property conveyed as GRANTOR, by the officer, naming him and his office.

Historical: Laws 1907, 95, Sec. 1.

Certificates of Sale.

Sec. 2065. The recorder must keep in his office a book to be called "Certificates of Sale", and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which he must enter, in separate columns, the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale.

Historical: Rev. St. 1887, Sec. 2026.
"In separate columns" transposed for
grammatical reasons.

California Legislation: Same: Pol.
Code 1872, Sec. 4237; Deering's Code,
ib.; Kerr's Code, ib.

Judgments Affecting Land.

Sec. 2066. The recorder must file and record with the record of deeds, grants and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is recorder.

Historical: Rev. St. 1887, Sec. 2027.
California Legislation: Same: Pol.

Code 1872, Sec. 4238; Deering's Code,
ib.; Kerr's Code, ib.

Same: Record Imparts Notice.

Sec. 2067. Every such certified copy of decree of partition, from the time of filing the same with the recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and lienholders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant or transfer.

Historical: Rev. St. 1887, Sec. 2028.
"Decree of" inserted before "parti-
tion" to make the sentence complete.

California Legislation: Same: Pol.
Code 1872, Sec. 4239; Deering's Code,
ib.; Kerr's Code, ib.

Several Indexes in Same Volume.

Sec. 2068. The recorder may keep in the same volume any two or more of the indexes required to be kept, but the several indexes must be kept distinct from each other, and the volume must be distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order.

Historical: Rev. St. 1887, Sec. 2029.
See 1 Ter. Ses. (1864) 475, Sec. 73.
Omitting last half of section, relating
to indexing official deeds, as super-
seded by Laws 1907, 95 (Sec. 2064,
ante).

California Legislation: Similar: Pol.
Code 1872, Sec. 4240; Deering's Code,
ib.; Kerr's Code, ib.

Indorsement on Instruments.

Sec. 2069. When any instrument, paper or notice, authorized by law to be recorded, is deposited in the recorder's office for record, the recorder must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and at once enter it in the proper index, and must record the same without delay, together with the acknowledgments, proofs and certificates, written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

Historical: Rev. St. 1887, Sec. 2030.
1 Ter. Ses. (1864) 475, Sec. 74.

California Legislation: Same except
"and at once enter it in the proper

index," line 5, omitted: Pol. Code
1872, Sec. 4241; Deering's Code, ib.;
Kerr's Code, ib.

Same: Book and Page of Record.

Sec. 2070. He must also indorse upon each instrument, paper or notice, the book and pages in which it is recorded, and must thereafter deliver it upon request to the party leaving the same for record, or to his order.

Historical: Rev. St. 1887, Sec. 2031.
See 1 Ter. Ses. (1864) 475, Sec. 75.

California Legislation: Same except
"the time when and" inserted after

"notice," line 2: Pol. Code 1872, Sec. 4242; Deering's Code, ib.; Kerr's Code, ib.

Number to Be Stamped on Instruments.

Sec. 2071. It is hereby made the duty of each county recorder in this State, when any instrument, paper or notice authorized by law to be recorded is deposited in the recorder's office for record, immediately to write or stamp thereon an instrument number, and the numbers so stamped shall be consecutive in the order of filing, commencing with number one in each county and following in the order of the filing of the various instruments, papers or notices, and priority of number shall be prima facie evidence of priority of filing: *Provided*, That, when such recorder shall receive by mail or other like inclosure more than one instrument, paper or notice at a time, he shall affix such numbers in the consecutive order in which said instruments, papers or notices actually came to his hand on opening, save that when more than one instrument, paper or notice is received from the same source at the same time, he may follow such directions as the sender may give in relation to such numbering.

Historical: Laws 1903, 428, Sec. 1.

Reception Book.

Sec. 2072. There shall be provided by the county commissioners of each county, in the same manner that other record books are provided, a book for use in the office of the recorder to be known as the reception book, in which shall be entered, immediately after numbering, all instruments, papers or notices authorized by law to be recorded. Such book shall be ruled in parallel columns and in the first column at the left hand side of the page, shall be entered the instrument number; in the second column, the day, hour and minute of filing; in the third column, the grantor, or person executing the instrument; in the fourth column, the grantee, or person to whom the instrument is executed, if there be such; in the fifth column, the character of the instrument; in the sixth column, the book and page where recorded; in the seventh column a brief description of the property, if any, described therein; and in the last column at the right, the name of the person to whom delivered. Such book shall be a part of the public records of such office, and open to public inspection during office hours.

Historical: Laws 1903, 428, Sec. 2.

Certificate of Time of Reception.

Sec. 2073. When any such instrument, paper or notice is numbered and entered in the reception book and indexed, it shall be recorded, or filed, as now provided by law; and it shall be the duty of the re-

corder to write or stamp, or cause to be written or stamped, at the beginning of the record thereof, if recorded, the words "Instrument number" and add thereto the number stamped or written on such instrument, paper or notice, and to add immediately after the record thereof, a certificate setting forth the exact time of the reception of such instrument, paper or notice, giving the day, hour and minute as set out in the original notation of filing made by him upon the instrument, paper or notice itself, and the name of the person at whose request it is recorded, which record and certificate he shall authenticate with his official signature, but for which certificate and authentication he shall not be authorized or permitted to collect a fee.

Historical: Laws 1903, 428, Sec. 3.

Failure to Properly Record Instrument.

Sec. 2074. If any recorder neglects or refuses or fails to record any instrument, paper or notice authorized by law to be recorded, in the manner provided for in the three preceding sections, he shall be liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby, and for each such neglect or failure or refusal, whether damages are recovered by an aggrieved party or not, he shall pay into the general school fund of his county the sum of fifty dollars, which may be recovered by an action which it is the duty of the county attorney to prosecute. All penalties provided by this section shall be recoverable from the recorder upon his official bond.

Historical: Laws 1903, 428, Sec. 4.
California Legislation: See pol.

Code 1872, Sec. 4244; Deering's Code, ib.; Kerr's Code, ib.

Recorder Must Make Searches.

Sec. 2075. The recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

Historical: Rev. St. 1887, Sec. 2032.
1 Ter. Ses. (1864) 475, Sec. 76.
California Legislation: Same except

"recorded and" inserted before "filed,"
line 7: Pol. Code 1872, Sec. 4243;
Deering's Code, ib.; Kerr's Code, ib.

Liability for Neglect.

Sec. 2076. If any recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice within a reasonable time after receiving the same; or,
2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,
3. Neglects or refuses to keep in his office such indexes as are

required by this chapter, or to make the proper entries therein; or,

4. Neglects or refuses to make the searches and to give the certificate required by this chapter; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or,

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein;

He is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby.

Historical: Rev. St. 1887, Sec. 2033.
See 1 Ter. Ses. (1864) 475, Sec. 77.

Code 1872, Sec. 4244; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Fees to Be Prepaid.

Sec. 2077. He is not bound to record any instrument or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered.

Historical: Rev. St. 1887, Sec. 2034.
1 Ter. Ses. (1864) 475, Sec. 84.

Code 1872, Sec. 4245; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

Records Open to Inspection.

Sec. 2078. All books of record, maps, charts, surveys, and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

Historical: Rev. St. 1887, Sec. 2035.
1 Ter. Ses. (1864) 475, Sec. 80.

Code 1872, Sec. 4246; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Pol.

ARTICLE 8.

ASSESSOR AND TAX COLLECTOR.

Section

2079. Duties of assessor.

Duties of Assessor.

Sec. 2079. The assessor is ex-officio tax collector, and his duties in relation to the assessment and collection of revenue are prescribed in Title 10 of this Code, relating to revenue.

Historical: New section by Commissioner inserted in place of Rev. St. Sec. 2040, which is superseded by Laws 1901, 233, Sec. 179 (Code, Sec. 1809).

Cross Reference: Assessor ineligible to succeed himself: Const. Art. 18, Sec. 6.

To furnish information to Commissioner of Immigration: Sec. 1420.

To make lists of persons liable to military duties: Sec. 706.

To assess and collect special school district taxes: Sec. 623.

To collect road poll taxes in contract road districts: Sec. 892.

Collection of road taxes: Secs. 904, 905, 906.

To collect taxes levied by good road district: Sec. 1056.

To collect drainage district taxes: Sec. 2473.

ARTICLE 9.
PROSECUTING ATTORNEY.

Section	Section
2080. Qualifications.	2084. Prohibitions.
2081. Appointment of special prosecutor.	2085. Adviser of county commissioners.
2082. Duties.	2086. Appointment of counsel for accused.
2083. Receipts for money collected.	

Note: This article supersedes Rev. St. 1887, Secs. 2050-2057; amended Laws 1890-91, 46, prescribing the duties of the district attorney, which were rendered obsolete by the amendment, in 1895, of Const. Art. 5, Sec. 18, creating the office of prosecuting attorney. The words "county attorney" are changed throughout to "prosecuting attorney" to conform to the nomenclature of the Constitution."

Qualifications.

Sec. 2080. No person shall be eligible to the office of prosecuting attorney who is not an attorney and counselor at law duly licensed to practice as such in the District Courts of the State. No prosecuting attorney shall hold any other county or State office during his term of office as prosecuting attorney.

Historical: Laws 1899, 24, Sec. 1; re-enacting Laws 1897, 74, Sec. 1.

Cited: State v. Corcoran (1900) 7 Ida. 220; 61 Pac. 1034.

Employment of Special Counsel: This act, in providing for a district attorney, does not impair the power

of the county commissioners to employ special counsel to perform legal services for the county as authorized by Rev. St. Sec. 1759, subd. 13. (Code Sec. 1917. Anderson v. Shoshone Co. (1898) 6 Ida. 76; 53 Pac. 105.

Appointment of Special Prosecutor.

Sec. 2081. When there is no prosecuting attorney for the county, or when he is absent from the court, or when he has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged, and for which he is to be tried on a criminal charge, or when he is unable to attend to his duties, the District Court may, by an order entered in its minutes, stating the cause therefor, appoint some suitable person to perform for the time being, or for the trial of such accused person, the duties of such prosecuting attorney, and the person so appointed has all the powers of the prosecuting attorney, while so acting as such.

Historical: Laws 1899, 24, Sec. 2; re-enacting Laws 1897, 74, Sec. 2.

Appointment of Special Attorney: Where there is no district attorney for a district, or where he is absent from the court, or is under any of the disabilities herein enumerated, the District Court may appoint a person for the time being to fulfill the duties of district attorney, and such appointee has all the powers of the district attorney, and may receive such compensation as the court may allow out of the salary of the district attorney. Conger v. Board of Commissioners (1897) 5 Ida. 347; 48 Pac. 1046.

The court may appoint a suitable person to perform, for the time being, the duties of the county attorney, only

on the occurrence of some of the contingencies that disqualify the county attorney from performing the duties of his office. The appointment of a special attorney to appear before the grand jury on the ground that the county attorney was engaged in other business, is void, and an indictment returned by the grand jury before which such special attorney appeared should be quashed. State v. Barber (1907) 13 Ida. —; 88 Pac. 418.

Same—Disqualification: A person is not disqualified from acting as county attorney pro tem. by reason of having been an attorney for a mining company in a civil case, though it is claimed that the criminal action, for which such attorney is especially appointed, is being prosecuted at the

instigation of such mining company. State v. Corcoran (1900) 7 Ida. 220; 61 Pac. 1034.

An attorney is not disqualified from acting as county attorney by reason of his residence in another county. Ib.

Powers of Appointee: A properly appointed county attorney pro tem., being for the time the de facto county attorney and clothed with the powers and duties of that officer, is authorized to appear before the grand jury. Ib.

Duties.

Sec. 2082. It is the duty of the prosecuting attorney:

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the District Court of his county in which the people or the State or the county are interested, or are a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county.

2. To prosecute all criminal actions before the probate and justices' courts of his county when called upon by said courts, and upon the request of magistrates to conduct criminal examinations which may be had before such magistrates, and to prosecute or defend all civil actions before the probate and justices' courts of the county, in which the people or the State or the county are interested or a party.

3. To give advice to the board of county commissioners, and other public officers of his county, when requested in all public matters, in which the people or the State or the county are interested or a party.

4. To attend, when requested by any grand jury for the purpose of examining witnesses before them; to draw bills of indictments, informations and accusations; to issue subpoenas and other process requiring the attendance of witnesses.

5. On the first Monday of each month to settle with the auditor, and pay over all money collected or received by him during the preceding month, belonging to the county or State, to the county treasurer, taking his receipt therefor, and to file, on the first Monday of January in each year, in the office of the auditor of his county, an account verified by his affidavit, of all money received by him during the preceding year by virtue of his office, for fines, forfeitures, penalties or costs, specifying the name of each person, from whom he receives the same, the amount received from each, and the cause for which the same was paid.

6. To perform all other duties required by him of any law.

Historical: Laws 1899, 24, Sec. 3; re-enacting Laws 1897, 74, Sec. 3.

Cross Reference: Election and qualifications: Const. Art. 5, Sec. 18. To prosecute officers failing to make reports: Sec. 281.

To sue road overseers for penalty for failure to report or to pay over money: Sec. 915.

To sue defaulting leasees of highways for forfeiture of lease: Sec. 974.

Unauthorized Appointment: Where the county commissioners employ an attorney generally to act for the county, and such contract is declared void because it violates this section, the attorney so employed cannot maintain an action in quantum meruit for the value of the services rendered by him for the county. Hampton v. Board of Commissioners (1896) 4 Ida. 646; 43 Pac. 324.

Prosecution of toll companies for refusal to repair roads: Sec. 1011.

To sue for fines incurred for operating a shearing corral without a license: Sec. 1208.

To prosecute violations of the medical examiners' act: Sec. 1355.

To prosecute violations of the chapter relating to the practice of optometry: Sec. 1383.

To prosecute violations of the chap-

ter relating to the practice of pharmacy: Sec. 1400.

To prosecute violations of the child labor law: Sec. 1473.

To complain of violations of the liquor law: Sec. 1526.

To sue assessor for taxes not collected or not assessed; Sec. 1813; for failure to make settlement with auditor: Sec. 1819; to sue for taxes sought to be evaded: Sec. 1820.

To prosecute suits to recover license taxes: Sec. 1835.

To sue to recover transfer taxes due and unpaid: Secs. 1891, 1897.

To make settlements of transactions connected with the revenue: Sec. 1822.

To bring suit to cancel State highway leases at the direction of the State Highway Commission: Sec. 1074.

To prosecute violations of the law relating to the sales of timber on State lands: Sec. 1598.

To bring suits to recover expenses incurred by horticultural inspectors in eradicating fruit pests: Sec. 1315.

To enforce compliance by county officers with instructions of the State Examiner: Sec. 176.

To give legal advice and conduct prosecutions for State Examiner: Sec. 186.

To render assistance to the Dairy,

Food and Oil Commissioners, and to prosecute violations of the dairy, food and oil law: Sec. 1121.

For duties in criminal cases in general, see Penal Code.

Cited: State v. Corcoran (1900) 7 Ida. 220; 61 Pac. 1034; State v. Barber (1907) 13 Ida. —; 88 Pac. 418.

Duties of Attorney: It is the duty of the district attorney to prosecute all criminal cases, and to prosecute or defend all actions, applications or motions in civil or criminal cases when the State or any of the counties of his district are interested, and also to give advice to the boards of county commissioners and other public officers in his district. Conger v. Board of Commissioners (1897) 5 Ida. 347; 48 Pac. 1064. It is the duty of the district attorney to prosecute an action to foreclose a school fund mortgage without extra compensation. State v. Fitzpatrick (1897) 5 Ida. 499; 51 Pac. 112.

Special Counsel: This section does not preclude private counsel from appearing for the State in criminal cases. People v. Biles (1885) 2 Ida. 114; 6 Pac. 120. State v. Steers (1906) 12 Ida. 174; 85 Pac. 104.

Receipts for Money Collected.

Sec. 2083. When any prosecuting attorney receives any money for fines, forfeitures, penalties or costs, he must deliver to the person paying the same duplicate receipts therefor, one of which must be filed by such person in the office of the county auditor.

Historical: Laws 1899, 24, Sec. 4; re-enacting Laws 1897, 74, Sec. 4.

Prohibitions.

Sec. 2084. No prosecuting attorney must receive any fee or reward for or on behalf of any prosecutor or other individual, for services in any prosecution, or business to which it is his official duty to attend or discharge; nor be concerned as attorney or counsel for either party other than for the State, people or county, in any civil action depending upon the same state of facts, upon which any criminal prosecution commenced but not determined depends, and no law partner of any county attorney must be engaged in the defense of any suit, action or proceeding, in which said prosecuting attorney appears on behalf of the people, State or county.

Historical: Laws 1899, 24, Sec. 5; re-enacting Laws 1897, 74, Sec. 5.

Cross Reference: Penalty for attor-

ney defending when partner prosecutes: Sec. 6525.

Adviser of County Commissioners.

Sec. 2085. The prosecuting attorney is the legal adviser of the board of commissioners; he must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

Historical: Laws 1899, 24, Sec. 6;
re-enacting Laws 1897, 74, Sec. 7.

Appointment of Counsel for Accused.

Sec. 2086. Whenever upon the trial of a person in the District Court, upon an information or indictment, it appears to the satisfaction of the court that the accused is poor and unable to procure the services of counsel, the court may appoint counsel to conduct the defense of the accused, for which service such counsel must be paid out of the county treasury, upon order of the Judge of the court, as follows: In all cases of misdemeanor the sum of ten dollars; in all cases of felony other than murder the sum of twenty-five dollars, and in cases of murder the sum of fifty dollars.

Historical: Laws 1899, 26, Sec. 1;
re-enacting Laws 1897, 74, Sec. 6.

ARTICLE 10.

SURVEYOR.

Section

- 2087. Duties of surveyor.
- 2088. Lands divided by county lines.
- 2089. Same: Court may designate surveyor.
- 2090. Survey when county surveyor is interested.
- 2091. Establishment of county lines.
- 2092. County commissioners to procure plats.

Section

- 2093. County surveys to be made by county surveyors.
- 2094. Commissioners to furnish record books, etc.
- 2095. Surveys must conform to United States manual.

Duties of Surveyor.

Sec. 2087. The surveyor of each county shall:

1. Make any survey that may be required by order of court, or on application of any person.

2. Keep a fair and correct record of all official surveys made by himself or deputy in good and substantial books, which shall be furnished him by the county commissioners for that purpose. All records of road surveys and county boundary lines shall be kept in separate books. All of such records and accompanying plats he shall, at the expiration of his term of office, turn over to his successor in office, together with the records and plats received by him from his predecessor in office.

3. Number his surveys progressively with date, township, range, section and name of party for whom it is executed. The mode of writing field notes and preparing plats shall be in the same manner as prescribed for the guidance of United States deputy surveyors, as nearly as practicable.

4. Deliver a copy of any survey to any person or court requiring the same on payment of the fee allowed by law.

5. All corners established or re-established shall be of stone or other imperishable material placed securely in the ground and of such dimensions as required by the United States manual. The marks so placed on said corners, when section or quarter-section, shall be the same as prescribed by said United States manual, with the additional letters C. S. (for county survey). All other corners

in the interior of a section shall be so marked to indicate what they represent, in addition to the letters C. S. The same instructions apply to the marking of bearing trees and bearing objects.

Historical: Rev. St. 1887, Sec. 2067 (first three lines of section), combined with Laws 1899, 295, Sec. 3; re-enacting Laws 1897, 19, Sec. 3.

California Legislation: See Pol. Code 1872, Sec. 4268; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: County surveyor to run division lines in case of disputes between adjoining land owners as to the location or partition fences: Sec. 1273.

Lands Divided by County Lines.

Sec. 2088. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such lands are situated, and such survey shall be as valid as though the lands were situated entirely within the county. Each chainman or flagman, employed by the county surveyor or his deputy on an official survey, shall, before commencing the duty assigned to him, take an oath (or affirmation) to faithfully and impartially execute the duties assigned to him, which oath (or affirmation) the county surveyor is authorized to administer. If a party for whom a survey is made does not furnish the chainman and markers, the surveyor may employ such necessary assistants, and receive a reasonable hire for all employed.

Historical: Laws 1899, 295, Sec. 4; re-enacting Laws 1897, 19, Sec. 4.

Same: Court May Designate Surveyor.

Sec. 2089. When land, the title to which is in dispute, before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

Historical: Rev. St. 1887, Sec. 2069. 1 Ter. Ses. (1864) 475, Sec. 181.

California Legislation: Same: Pol.

Code 1872, Sec. 4270; Deering's Code, ib.; Kerr's Code, ib.

Survey When County Surveyor Is Interested.

Sec. 2090. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before the court, the court shall direct the survey or re-survey to be made by some capable person, who is in no wise interested, who shall be authorized to administer oaths in the same manner as the county surveyor is directed to do, and shall return said survey or re-survey on oath or affirmation, and shall receive for his services the same fees that the county surveyor would receive for like services.

Historical: Laws 1899, 295, Sec. 2; re-enacting Laws 1897, 19, Sec. 2.

Establishment of County Lines.

Sec. 2091. Whenever it shall be ordered by an act of the Legislature to establish the boundary line between two counties, the board of county commissioners of each county interested in the boundary shall authorize the county surveyors of said counties to jointly estab-

lish said boundary, and firmly plant and mark corners and monuments of imperishable material, also to prepare plats and field notes jointly, one copy of which shall be filed with the auditor and recorder of each of the counties so interested. The fees and compensations for such surveys, plats and field notes, as hereinafter provided, shall be paid out of the county treasury upon the order of the county commissioners of each county to the respective surveyors so employed.

Historical: Laws 1899, 295, Sec. 6;
re-enacting Laws 1897, 19, Sec. 6.

County Commissioners to Procure Plats.

Sec. 2092. The board of county commissioners shall, when necessary and recommended by the county surveyor, procure from the Surveyor General of the United States for the State of Idaho, a certified copy of the plats and extract of the field notes of the United States surveys or any part thereof lying within the county, and file the same in the office of the county surveyor. No county surveyor, thus provided with plats and notes, when called upon to execute any survey, shall make any charge for furnishing the same. A copy from said plats and notes, certified to by the county surveyor, shall be legal evidence in any court.

Historical: Laws 1899, 295, Sec. 7;
re-enacting Laws 1897, 19, Sec. 7.

County Surveys to Be Made by County Surveyors.

Sec. 2093. All surveys, maps and plats ordered by the board of county commissioners shall be made by the county surveyor, unless the office of county surveyor shall be vacant; in such case the surveyor appointed by the board shall be governed by the provisions of this article in the performance of his duty, and shall receive the same fees that are allowed to county surveyors.

Historical: Laws 1899, 295, Sec. 8; re-enacting Laws 1897, 19, Sec. 8.	Cross Reference: Fees of county surveyors: Sec. 2125.
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Commissioners to Furnish Books, Etc.

Sec. 2094. The board of county commissioners shall furnish the county surveyor with all necessary blanks, record books, plat books, etc., for the keeping of notes and records, as herein required.

Historical: Laws 1899, 295, Sec. 9;
re-enacting Laws 1897, 19, Sec. 9.

Surveys Must Conform to United States Manual.

Sec. 2095. No surveys or re-surveys hereafter made by the county surveyor or other surveyor, shall be considered legal evidence in any court within the State, except such surveys as are made in accordance with the United States manual of surveying instructions, the circular on restoration of lost or obliterated corners and subdivision of sections, issued by the general land office, or by the authority of the United States, the State of Idaho, or by mutual consent of the parties.

Historical: Laws 1899, 295, Sec. 1;
re-enacting Laws 1897, 19, Sec. 1.

ARTICLE 11.

CORONER.

Section

2096. Inquests.
 2097. Burial of unclaimed bodies.
 2098. Disposal of property found on corpse.
 2099. Verified statement required of coroner.

Section

2100. Justice of the peace to act as coroner.
 2101. Coroner to act as sheriff.
 2102. Same: Powers when so acting.

Inquests.

Sec. 2096. The coroner must hold inquests as prescribed in the Penal Code.

Historical: Rev. St. 1887, Sec. 2080.

California Legislation: Similar: Pol. Code 1872, Sec. 4285; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Coroner's inquests: Secs. 8377-8386.

Burial of Unclaimed Bodies.

Sec. 2097. When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county.

Historical: Rev. St. 1887, Sec. 2081.
 8 Ter. Ses. (1875) 566, Sec. 22.

California Legislation: Same: Pol.

Code 1872, Sec. 4286; Deering's Code, ib.; Kerr's Code, ib.

Disposal of Property Found on Corpse.

Sec. 2098. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased, any money or other property found upon the body.

Historical: Rev. St. 1887, Sec. 2082.
 See 8 Ter. Ses. (1875) 566, Sec. 15.

California Legislation: Same: Pol.

Code 1872, Sec. 4287; Deering's Code, ib.; Kerr's Code, ib.

Verified Statement Required of Coroner.

Sec. 2099. Before auditing or allowing the accounts of the coroner, the commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of a deceased person which has come into his possession since his last statement;
2. The disposition made of such property.

Historical: Rev. St. 1887, Sec. 2083.
 Sec. 8 Ter. Ses. (1864) 566, Sec. 18.

California Legislation: Same except

"supervisors" for "commissioners":
 Pol. Code 1872, Sec. 4288; Deering's Code, ib.; Kerr's Code, ib.

Justice of the Peace to Act as Coroner.

Sec. 2100. If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority, and subject to the same obligations and penalties, as the coroner.

Historical: Rev. St. 1887, Sec. 2084.
8 Ter. Ses. (1875) 566, Sec. 19.
California Legislation: Same: Pol.

Code 1872, Sec. 4289; Deering's Code, ib.; Kerr's Code, ib.

Coroner to Act as Sheriff.

Sec. 2101. The coroner must perform the duties of sheriff in all cases where the sheriff is interested, or otherwise incapacitated from serving, and in cases of vacancy by death, resignation or otherwise, in the office of sheriff, the coroner must discharge the duties of such office until a sheriff is appointed or elected and qualified.

Historical: Rev. St. 1887, Sec. 2085,
8 Ter. Ses. (1875) 566, Sec. 2.

California Legislation: See Pol.
Code 1872, Sec. 4290; Deering's Code, ib.; Kerr's Code, ib.

Employment of Coroner: Martial law having been declared to exist in

a certain county, and the sheriff being detained by the military authorities, the District Court has power to direct the coroner to perform the duties of the office of sheriff. State v. Corcoran (1900) 7 Ida. 220; 61 Pac. 1034.

Same: Powers When So Acting.

Sec. 2102. Whenever the coroner acts as sheriff, he possesses the powers, and may perform all the duties, of sheriff, and is liable on his official bond, in like manner as a sheriff would be; and is entitled to the same fees as are allowed by law to the sheriff for similar services.

Historical: Rev. St. 1887, Sec. 2086.
8 Ter. Ses. (1875) 566, Sec. 3.

ARTICLE 12.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section
2103. Powers and duties.

Powers and Duties.

Sec. 2103. The election, powers and duties of the county superintendent of public instruction are provided for in Title 4, Chapter 6, of this Code.

Historical: New section by commissioner.

ARTICLE 13.

JUSTICES OF THE PEACE AND INFERIOR OFFICERS.

Section
2104. Duties of justices of the peace.
2105. Duties of constable.
2106. Same: Execution and return of process.
2107. Failure to return process.
2108. Neglect to levy execution.
2109. Failure to pay over money.

Section
2110. Liability on bond.
2111. Conservators of the peace.
2112. Power to deputize.
2113. Appointment of special constable.
2114. Same: Record of appointment.

Duties of Justices of the Peace.

Sec. 2104. Justices of the peace must perform such duties as are prescribed in the Code of Civil Procedure, and such other duties as are prescribed by law.

Historical: Rev. St. 1887, Sec. 2092.

California Legislation: Same except "Title 12, Part 2, of" inserted before "the Code of Civil Procedure": Pol. Code 1872, Sec. 4316; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: To reside in precinct: Sec. 3885.

To perform duties of police judge in case of vacancy in office or absence of judge: Sec. 2217.

May take acknowledgments: Sec. 3124.

Duties of Constable.

Sec. 2105. Constables must attend the courts of justices of the peace within their precincts whenever so required, and within their counties execute, serve and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

Historical: Rev. St. 1887, Sec. 2090. 1 Ter. Ses. (1864) 475, Sec. 154. "Precincts" inserted for "townships" to conform to local nomenclature.

California Legislation: Same except "townships" for "precincts": Pol. Code 1872, Sec. 4314; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Duties in taking up estrays: Secs. 1299-1301. To sell stallions taken up for running at large: Sec. 1286. To prosecute per-

Fee for solemnizing marriages: Sec. 2626.

To perform duties of constable in inspecting animals for shipment where the constable cannot be found: Sec. 1250.

Duties with respect to impounding diseased animals: Sec. 1215.

May call meetings of corporations: Sec. 2734.

To appoint viewers in disputes as to partition fences: Sec. 1269.

sons permitting stock to run at large in towns: Sec. 1290. To levy on property to pay damages for hog trespass: Sec. 1281. To impound diseased animals and slaughter the same on order of justice of the peace: Sec. 1215. To complain of violations of liquor law: Sec. 1526. Duties on election day: Sec. 421. To inspect brands on animals before shipment: Sec. 1246.

Cited: Coombs v. Collins (1899) 6 Ida. 536; 57 Pac. 310.

Same: Execution and Return of Process.

Sec. 2106. In the execution, service and return of orders, writs, process and papers, where there are no positive provisions of law prescribing their duties, they must be governed by the laws relating to sheriffs, so far as they are applicable.

Historical: Rev. St. 1887, Sec. 2091. 1 Ter. Ses. (1864) 475, Sec. 155.

California Legislation: See Pol. Code 1872, Sec. 4315; Deering's Code, ib.; Kerr's Code, ib.

Cited: Coombs v. Collins (1899) 6 Ida. 536; 57 Pac. 310.

Failure to Return Process.

Sec. 2107. For failing or refusing to return, as required by law, any writ or process issued by a justice of the peace, or any paper connected with any suit or proceeding before such justice, the constable is liable to the party at whose instance the suit or process has issued, or for whom the paper is to be served, in the sum of fifty dollars, to be recovered of him and his sureties by motion, before a justice of the peace of his precinct, five days' notice of the motion having been given.

Historical: Rev. St. 1887, Sec. 2093. 1 Ter. Ses. (1864) 475, Sec. 156.

Neglect to Levy Execution.

Sec. 2108. If any constable to whom any writ of execution is delivered, neglects or refuses after being required by the creditor, his agent or attorney, to levy upon or sell any property of the defendant,

which is subject to execution, he and the sureties on his bond shall be liable to the creditor for the value of such property.

Historical: Rev. St. 1887, Sec. 2094.

1 Ter. Ses. (1864) 475, Sec. 157.

Failure to Pay Over Money.

Sec. 2109. If any constable neglects or refuses to pay over any money in his hands, which he has collected or received in his official capacity, when demanded by the person entitled thereto, the amount thereof, with thirty-five per cent damages and interest at the rate of ten per cent per month from the time of demand, may be recovered from such constable and his sureties.

Historical: Rev. St. 1887, Sec. 2095.

1 Ter. Ses. (1864) 475, Sec. 158.

Liability on Bond.

Sec. 2110. For any official act or any omission to perform any duty required of him by law, the constable is liable on his bond to any person injured.

Historical: Rev. St. 1887, Sec. 2096.

1 Ter. Ses. (1864) 475, Sec. 159.

Conservators of the Peace.

Sec. 2111. Constables are conservators of the peace within their respective precincts.

Historical: Rev. St. 1887, Sec. 2097.

See 1 Ter. Ses. (1864) 475, Sec. 160.

Power to Deputize.

Sec. 2112. No constable of any county of this State can appoint or deputize any person to perform any of the duties of his office except in cases of riots or making arrests.

Historical: Rev. St. 1887, Sec. 2098.

5 Ter. Ses. (1869) 123, Sec. 1.

Appointment of Special Constable.

Sec. 2113. When a legally qualified constable does not reside in any precinct, is absent therefrom, or is otherwise incapacitated or prevented from performing the duties of his office, any justice of the peace residing in said precinct is hereby authorized and empowered to appoint and deputize any person therein to act as special constable, with full power and authority to perform such duties of constable as said justice may specifically order or designate: *Provided*, That before serving any writ of attachment, making any levy under a writ of execution, or making any arrest in a civil action, such specially appointed constable shall be required to give a good and sufficient bond in form and amount as required from a regularly elected constable, the same to be first approved in writing thereon by such justice of the peace, and thereafterward filed with the county recorder.

Historical: Laws 1907, 158, Sec. 1.

Same: Record of Appointment.

Sec. 2114. Any justice of the peace appointing and deputizing any person to act as special constable as provided in the preceding section, shall make a record thereof in his docket, and shall designate therein the specific and special purposes for which the appointment is made.

Historical: Laws 1907, 158, Sec. 2.

CHAPTER 4. SALARIES AND FEES OF OFFICE.

Article

1. Salaries of officers.

Article

2. Fees.

ARTICLE 1.

SALARIES OF OFFICERS.

Section

- 2115. Officers to receive salaries and account for fees.
- 2116. Refusal to account is embezzlement.
- 2117. Salaries of commissioners: Classification of counties.

Section

- 2118. Salaries of county officers.
- 2119. Appointment and compensation of deputies.
- 2120. Counties organized in future.

Officers to Receive Salaries and Account for Fees.

Sec. 2115. The salaries of county officers as full compensation for their services must be paid quarterly from the county treasury, upon the warrants of the county auditor, and before being paid to such officers, must be allowed and audited by the board of commissioners as other claims against the county, and no officer or deputy must retain out of any money, in his hands belonging to the county, any salary, but all actual and necessary expenses incurred by any county officer or deputy in the performance of his official duty shall be a legal charge against the county, and may be retained by him out of any fees which may come into his hands. All fees which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treasury at the end of each quarter. He shall, at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts.

Historical: Laws 1899, 405, Sec. 1.

Cross Reference: County officers and deputies shall receive quarterly salaries in full compensation for their services and actual and necessary expenses incurred in the performance of their official duties, and shall turn all fees received over and above expenses into the county treasury: Const. Art. 18, Sec. 7. To keep account of fees: Sec. 342.

Constitutionality: The act of which this section was the first section (Laws 1899, 405), is constitutional except in so far as it authorizes county commissioners to fix their own salaries. *Stookey v. Board of Commrs.* (1899) 6 Ida. 542; 57 Pac. 312. The

objectionable provision has been superseded by Laws 1901, 226. (See Sec. 2117.)

Accounts of Officers: A bill of a county officer for expenses incurred in his official capacity while on official business, can only be considered by the commissioners as a part of the officer's quarterly statement and cannot be made an independent claim or account. *Clyne v. Bingham Co.* (1900) 7 Ida. 75; 60 Pac. 76.

A charge made by a county officer for living expenses is not an expense incurred in the performance of official duty such as to be payable by the county. *Ib.*

It should fully appear from the of-

ficer's quarterly statement in what manner and for what reasons the expenses presented in such statement were incurred. The statement should be sworn to and be accompanied by proper vouchers proving the disbursements. The claim of an officer presented in the following form: "August 13, State v. Dan Hopkins, hotel and horse feed, \$15.50", is a "lump sum" and should not be considered. *Ib.* An account of an officer against the county presented in the following form: "Mileage, 8 miles, serving subpoenas, \$2.80" is too indefinite to answer the requirements of law. *Ellis v. Bingham Co.* (1900) 7 *Ida.* 86; 60 *Pac.* 79.

An account of an officer against the county for expense presented in the following form: "State of Idaho v. James Southwick, et al, serving nine

warrants of arrest, \$18.00", is vague and indefinite. Such account should specify the names of the defendants arrested, and show in what courts the action was pending and specify in general terms the charge in the warrant against the parties arrested. *Ib.*

Accounting for Fees: Fees received by the county treasurer in acting as ex-officio public administrator, must be accounted for and reported to the county and cannot be retained by the officer for his personal or individual use. *In re Rice* (1906) 12 *Ida.* 305; 85 *Pac.* 1109.

The fees "received" by an officer for which he must account to the county, include fees earned, though not collected, by the officer. *Naylor v. Vermont etc. Co.* (1898) 6 *Ida.* 251; 55 *Pac.* 297.

Refusal to Account Is Embezzlement.

Sec. 2116. Any county officer or deputy who shall neglect or refuse to account for and pay into the county treasury any money received as fees or compensation in excess of his actual and necessary expenses, incurred in the performance of his official duties, within ten days after his quarterly settlement with the county, shall be guilty of embezzlement of public funds, and be punishable as provided for such offense.

Historical: Laws 1899, 405, Sec. 2.

Cross Reference: Similar provision: Const. Art. 18, Sec. 9. Embez-

zlement by public officers: Sec. 7066; punishment: Sec. 7076.

Salaries of Commissioners: Classification of Counties.

Sec. 2117. For the purpose of fixing the annual salaries of county commissioners in the several counties of the State of Idaho, the counties are hereby divided into three classes.

The following counties shall constitute the counties of the first class, to-wit: Idaho, Kootenai, Latah, Nez Perce, Shoshone, and Ada.

The following counties shall constitute the counties of the second class, to-wit: Bannock, Blaine, Bingham, Boise, Canyon, Elmore, Fremont, Oneida, Owyhee and Washington.

The following counties shall constitute the counties of the third class, to-wit: Bear Lake, Cassia, Custer, Lemhi, Lincoln, and Twin Falls.

The annual salaries of county commissioners in counties of the first class shall be seven hundred dollars, and all actual and necessary expenses; for counties of the second class five hundred dollars, and all actual and necessary expenses; for counties of the third class, three hundred dollars, and all actual and necessary expenses. The term "actual and necessary expenses" shall be deemed to include all traveling expenses incurred by any county officer when absent from his residence, in performance of the duties of his office.

Historical: Laws 1901, 226, Secs. 1, 2, 3. Twin Falls county is declared to be a county of the third class by the act creating it: See Laws 1907, 40, Sec. 2. No provision was made in the

Bonner County act (Laws 1907, 47) and as there is no reason for including the county in one class rather than another, the Commissioner has referred the matter to the Legislature.

Necessary Expenses: The actual necessary expenses of county officers include their board when absent from

their residence in the performance of their official duties. *Corker v. Pence* (1906) 12 Ida. 152; 85 Pac. 388.

Salaries of County Officers.

Sec. 2118. It shall be the duty of the board of county commissioners of each county, at its regular session in April next preceding any general election, to fix the annual salaries of the several county officers, except prosecuting attorneys, to be elected at said general election, for the term commencing on the second Monday in January next after said meeting, and in no case shall the salary of any county officer be less than the lowest amount hereinafter designated for such officer, and in no case shall it be higher than the highest amount hereinafter designated for such officer. The salary of prosecuting attorney shall be fixed at the regular July session next preceding each general election.

The sheriff shall receive a salary of not less than eight hundred dollars per annum, and not to exceed two thousand dollars per annum; he shall be allowed in addition to such salary as fixed by said board, the actual and necessary expenses for care of each prisoner confined in the county jail.

The clerk of the District Court and ex-officio auditor and recorder shall receive a salary of not less than eight hundred dollars per annum and not to exceed two thousand dollars per annum.

The assessor and ex-officio tax collector shall receive a salary of not less than eight hundred dollars per annum, and not to exceed three thousand dollars per annum.

The county treasurer shall receive a salary of not less than five hundred dollars per annum and not to exceed fifteen hundred dollars per annum.

The prosecuting attorney shall receive a salary of not less than five hundred dollars per annum and not to exceed fifteen hundred dollars per annum.

The probate judge shall receive a salary of not less than five hundred dollars per annum and not to exceed fifteen hundred dollars per annum.

The county superintendent of public instruction shall receive a salary of not less than two hundred fifty dollars per annum, and not to exceed twelve hundred dollars per annum.

The county surveyor shall receive a salary of not less than fifty dollars per annum, and not to exceed eight hundred dollars per annum.

The coroner shall receive a salary of not less than fifty dollars per annum, and not to exceed three hundred dollars per annum.

Historical: Laws 1899, 405, Sec. 3, with the exception of the last paragraph of the section which was held unconstitutional in *Stookey v. Board of Commissioners*, 6 Ida. 542; 57 Pac. 312. The paragraph is also superseded by Laws 1901, 226 (Code Sec. 2117). The provisos to the first paragraph relative to fixing salaries for the years 1899-1900 are omitted as obsolete. "Prosecuting attorney" inserted for "county attorney" throughout.

Cited: *Mombert v. Bannock Co.* (1904) 9 Ida. 470; 75 Pac. 239.

Duty in Fixing Salaries: This act does not delegate to the county commissioners a legislative power in the matter of fixing the salaries of county officers, but a quasi judicial power under which the commissioners should take into consideration the various elements which go to determine what salary should be paid, and from their determination an appeal lies to the District Court as in other cases. *Reynolds v. Board of Commrs.* (1899) 6 Ida. 787; 59 Pac. 730.

Appointment and Compensation of Deputies.

Sec. 2119. The sheriff, and the clerk of the District Court and ex-officio auditor and recorder, shall be empowered by the board of county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies to receive such remuneration as may be fixed by said board of county commissioners, which remuneration shall be paid quarterly in the same manner as the salaries of the county officers are paid: *Provided*, That any of the officers mentioned in this section requiring the services of one or more deputies or requiring clerical assistance shall, for a period of at least thirty days before any regular meeting of the board of county commissioners, publish a notice in some newspaper at the county seat, or if no newspaper is published at the county seat, then in some other newspaper published in the county, or if no newspaper be published in the county, then by posting a notice in his office for a period of thirty days before said regular meeting, of his intention to apply to the board of county commissioners for a deputy or deputies or for clerical assistance, and no deputy shall be appointed or clerical assistance allowed by said board until due proof of the publication of said notice shall have been furnished said board and the necessity for said assistance is satisfactorily shown, and any taxpayer in the county shall have a right to appear before said board and protest against said appointment and show cause why said assistance should not be allowed: *Provided, further*, That during the terms of the District Court, the District Judge may authorize said officers to employ such temporary assistance as they may need, and his certificate shall be sufficient proof to the board of the necessity of such employment.

Historical: Laws 1899, 405, Sec. 4.
Cross Reference: General power of

county officers to appoint deputies:
Sec. 1975.

Counties Organized in the Future.

Sec. 2120. Counties created or organized hereafter shall be governed by the provisions hereof, and the boards of county commissioners of such newly created organized counties shall respectively fix and determine at their first meeting the salaries to be paid the several county officers as herein provided for.

Historical: Laws 1899, 405, Sec. 5.
"Hereafter" for "after the passage of this act."

ARTICLE 2.
FEES.

Section	Section
2121. Fees of clerk of District Court.	2129a. No fee to be charged to pensioners.
2122. Sheriff's fees.	2130. Officers must publish table of fees.
2123. Probate judge's fees.	2131. Execution for fees.
2124. Recorder's and auditor's fees.	2132. Folio defined.
2125. Fees of county surveyor.	2133. Limitation on mileage of officer.
2126. Fees of justice of the peace.	2134. Receipt for fees.
2127. Fees of constable.	
2128. Fees to be prepaid.	
2129. No fee in habeas corpus.	

Fees of Clerk of District Court.

Sec. 2121. The clerk of the District Court may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law:

For entering each suit on the register of actions, and making the necessary entries therein, twenty-five cents.

For issuing every summons, attachment, writ of injunction, or other original writ or process, fifty cents.

For issuing each subpoena, ten cents.

For filing each paper, fifteen cents.

For entering of record every motion, rule, order, default, non-suit, or discontinuance, twenty cents per folio.

For entering every cause on the calendar, and making a copy thereof for the bar, for each term of court, fifty cents.

For calling and swearing every jury, fifty cents.

For receiving and entering each verdict of a jury, fifty cents.

For entering every final judgment, for each folio, twenty cents.

For making a copy of any paper or record, including certificate, when required, for each folio, twenty cents.

For making and filing judgment roll, fifty cents.

For every certificate under seal, twenty-five cents.

For issuing every commission to take testimony, including certificate and seal, one dollar.

For taking down testimony or depositions, including oath, certificate and seal, for each folio, twenty cents.

For issuing every execution, or other final process, fifty cents.

For issuing every decree or order of sale, certificate and seal, for each folio, twenty cents.

For receiving and filing remittitur and accompanying papers from the Supreme Court, twenty-five cents.

For taking each bond required by law, twenty-five cents.

For acknowledgment of deed, or other instrument, including seal, twenty-five cents.

For swearing witnesses, ten cents.

For taking affidavit, including jurat, fifteen cents.

For entry of each case in judgment docket, fifty cents.

For entering satisfaction of judgment, twenty-five cents.

For filing and entering transcript of judgment from justice's court, fifty cents.

For all services not herein enumerated and of him required, or which he is called on to perform, such fees as are herein allowed for similar services.

For final papers of naturalization, four dollars, which includes all services in swearing witnesses, making minutes, recording, certifying, and issuing such papers under seal.

Historical: Laws 1899, 116, Sec. 1; re-enacting Laws 1890-91, 174, Sec. 1. "Four dollars" inserted for "five dollars" in the last paragraph. The last naturalization law (act Congress, June 29, 1906; see Codes, page 61, ante), Sec. 13, fixes the clerk's fees

at four dollars, and Sec. 21 makes it a misdemeanor for the clerk to charge or receive a greater fee. Congressional legislation must control in case of a conflict with State laws on this subject. See U. S. Const. Art. 1, Sec. 8.

Sheriff's Fees.

Sec. 2122. The sheriff is allowed and may demand and receive the fees hereinafter specified:

1. For serving a summons and complaint, or any other process by which an action or proceeding is commenced, on each defendant, one dollar.

2. For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, one dollar.

3. For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, such sum as the court may order: *Provided*, That no more than three dollars per diem be allowed to a keeper.

4. For taking a bond or undertaking in any case in which he is authorized to take the same, fifty cents.

5. For copy of and making return on any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

6. For serving every notice, rule or order, fifty cents.

7. For making and posting notices, and advertising property for sale on attachment or execution, or under any judgment or order of sale, exclusive of the costs of publication, each notice, twenty cents per folio.

8. For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant, three dollars.

9. For holding each inquest, or trial of right of property, to include all services in the matter except mileage, three dollars.

10. For serving a subpoena, for each witness summoned, twenty-five cents.

11. For commissions for receiving and paying over money on execution or other process, when land or personal property has been levied on and sold, on the first one thousand dollars, two per cent; on all sums above that amount one per cent; but in no case of sale of real estate shall his commission exceed the sum of one hundred dollars, and when the amount of such sale is credited on the debt and no money is transferred, then one-half of such commission.

12. For commissions for receiving and paying over money on execution without levy, or where lands or goods levied on are not sold, on the first one thousand dollars, one and one-half per cent; and one-half of one per cent on all over that sum, but not to exceed in any case fifty dollars. The fees herein allowed for the levy of an execution, costs for advertising and percentage for making or collecting the money on execution, must be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made.

13. For drawing and executing a sheriff's deed, including the acknowledgment, to be paid by the grantee before delivery, three dollars.

14. For executing a certificate of sale, exclusive of the filing and recording the same, one dollar.

15. For making every arrest in a criminal proceeding, two dollars.

16. For summoning each juror, twenty-five cents.

17. For serving a subpoena in a criminal action or proceeding, for each witness summoned, twenty-five cents.

18. For traveling, to be computed in all cases from the court house, to serve any summons and complaint, or any other process by which an action or proceeding is commenced, notice, rule, order, subpoena, venire, attachment on property, to levy an execution, to post notice of sale, to sell property under execution or other order of sale, or execute an order of arrest, or order for the delivery of personal property, writ of possession or restitution, to hold inquest of trial of right of property, for each mile actually and necessarily traveled, in going only, thirty-five cents; for traveling to execute any warrant of arrest, subpoena, venire or other process in criminal cases, or for taking a prisoner from prison before a court or magistrate, or for taking a prisoner from the place of arrest to prison, or before a court or magistrate, for each mile actually and necessarily traveled, in going only, thirty-five cents; for each additional prisoner taken at the same time, fifteen cents per mile; but if any two or more papers be required to be served in the same action or proceeding, civil or criminal, or be in the possession of the sheriff for service at the same time, and in the same direction, one mileage only shall be charged; and in serving a subpoena, venire, process or paper, when two or more jurors, witnesses, parties or persons to be served reside or are found in the same direction, traveling fees must be charged only for the most distant; and only one mileage per day must be charged for taking a prisoner from prison before a court or magistrate; and constructive mileage must in no case be charged or allowed. For all services arising in justices' courts, the same fees as are allowed to constables for like services.

19. The sum of not more than one dollar per day for each prisoner confined in the county jail, as remuneration in full for the board, clothing and lights of such prisoner. He shall be allowed a jailor, for whose services he shall be allowed the sum of not less than two dollars, nor more than three dollars per day for each day a prisoner or prisoners are confined in the county jail of his county, to be fixed by the board of county commissioners. For all services under the election laws, the same mileage and fees as in this article provided for similar services.

Historical: Laws 1899, 116, Sec. 2; re-enacting Laws 1890-91, 174, Sec. 2. Omitting subd. 19 prescribing fees for executing death sentence, as obsolete under Laws 1899, 340, Sec. 5 (Code Sec. 8021), by which the warden of the penitentiary executes the death sentence.

Attendance on Courts: The sheriff is not entitled to compensation for attendance upon the District or any other courts. *Campbell v. Commrs. Logan Co.* (1894) 4 Ida. 181; 37 Pac. 329; *Eakin v. Nez Perce Co.* (1894) 4 Ida. 131; 36 Pac. 702.

Board of Prisoners: The sheriff must file vouchers for expenses incurred by him in boarding county prisoners in order to have his claim

therefor allowed. *Mombert v. Bannock Co.* (1904) 9 Ida. 470; 75 Pac. 239.

The sheriff, and the sheriff alone, is entitled to receive compensation from the county for the board of prisoners; a private person who furnished such board cannot enforce a claim against the county for compensation. (*Stockslager, J., dissents.*) *Ib.*

Commissions: Where a sheriff collects his commission for the sale of land on execution, he cannot charge another commission on money subsequently paid for redemption from said sale. *Coeur d'Alene Hdq. Co. v. Cameron* (1895) 4 Ida. 494; 42 Pac. 509.

Mileage: A sheriff is entitled to mileage for taking a prisoner from the place of arrest to prison, or before a court or magistrate, regardless of whether the prisoner was arrested with or without a warrant. *Warner v. Fremont Co.* (1895) 4 Ida. 591; 43 Pac. 327. A sheriff is not entitled to double mileage for serving different writs in the same case, at the same place and at the same time. *Ellis v. Bingham Co.* (1900) 7 Ida. 86; 60 Pac. 79.

Expenses Under Attachment: Keepers' fees can only be allowed by

order of court, and the prevailing party is not entitled to recover keepers' fees that have not been allowed by order of court. *Berry v. G. V. B. Mining Co.* (1897) 5 Ida. 691; 51 Pac. 746.

Expense incurred by the sheriff in hauling lumber taken under a writ of attachment, from the sawmill where it was attached, to a neighboring town, for the purpose of sale, is an unnecessary expense and not taxable as costs in the case. *McConnell v. McCormick* (1891) 3 Ida. 227; 28 Pac. 421.

Probate Judge's Fees.

Sec. 2123. The probate judge may charge and collect the following fees: When sitting as a committing magistrate in preliminary examinations, three dollars; for the trial of criminal causes, five dollars; for issuing warrant of arrest, fifty cents; for taking bail after commitment, fifty cents; for examination of insane person, five dollars. The clerk of the probate court, or the probate judge acting as clerk, is allowed, and may demand and receive, the fees hereinafter specified: The same fees allowed the clerk of the District Court or justice of the peace for the same services; for issuing letters testamentary, or of administration, or of guardianship, fifty cents; for writing and posting all the required copies of each notice required to be posted, fifty cents; for each notice, including all the copies, for publication and posting, in addition to costs of publication, fifty cents; for recording wills or other papers required by law to be recorded, for each folio, twenty cents; for copies of all papers or proceedings in the probate court, including certificate and seal, when required, for each folio, twenty cents; for entering each order, for each folio, twenty cents; for all other services, the same fees as are allowed the clerk of the District Court for like services: *Provided*, That if upon the filing of the appraisement of any estate it appears that the whole estate is not of the value of one thousand dollars, no further clerk's fees must be charged.

Historical: Laws 1899, 116, Sec. 3; re-enacting Laws 1890-91, 174, Sec. 3. Omitting the sentence providing for the payment of compensation when

fees fall below the minimum salary, as superseded by Laws 1899, 405 (Code Secs. 2115-2120) establishing the salary system.

Recorder's and Auditor's Fees.

Sec. 2124. The county recorder and auditor is allowed, and may receive for his services, the following fees, to be paid him by the party procuring his services as recorder: For filing, indorsing and indexing every instrument, paper or notice, when the instrument, paper or notice is not for record, but to be kept on file, fifty cents; for recording every instrument, paper or notice, for each folio, twenty cents; for copies of any record or paper, for each folio, twenty cents; for each certificate under seal, when required, twenty-five cents; for abstract of title and searching the records therefor, and for each conveyance or incumbrance certified, fifty cents; for entry of discharge of mortgage or other instrument on the margin of the record, witnessing and indexing the same, twenty-five cents; for recording every town plat or map, for first one hundred lots or less, three dollars

and fifty cents; and for each additional lot, one cent; for taking acknowledgments, including seal, fifty cents; for filing, recording and indexing marriage certificates, one dollar; for administering to the locator the oath and certifying the same on the location notice of a mining claim, and for filing, recording and indexing each notice, two dollars, which must be divided equally between him and his mining deputy, who receives such notice; for recording each mark or brand, fifty cents; for administering an oath, including jurat, twenty-five cents, and certifying the same when required, twenty-five cents additional; for all other services as recorder, not enumerated herein, the same fees allowed the clerk of the District Court for like services.

As the auditor, he is allowed and may receive, when not otherwise provided by law, fees as follows: For administering each oath, including a jurat, if required, twenty-five cents; for each paper filed, ten cents; for making records or furnishing copies thereof, twenty cents per folio.

Historical: Laws 1899, 116, Sec. 4; re-enacting Laws 1890-91, 174, Sec. 4. Omitting the provisions prescribing the fees of the auditor in the assessment and collection of taxes, and allowing him a salary as clerk of the board of county commissioners, as repealed by Laws 1899, 405 (Code Secs. 2115-2120) establishing the salary system.

fees of recorder, see cross reference note to Sec. 2061.

Repeal: This section, in so far as it relates to the compensation of the auditor in the assessment and collection of taxes, repeals so much of Rev. St. Secs. 1679 and 2157, subd. 5, as relates to the same subject. *Cunningham v. Moody* (1891) 3 Ida. 125; 35 Am. St. Rep. 269, 28 Pac. 395.

Cross Reference: For additional

Fees of County Surveyor.

Sec. 2125. The county surveyor shall be allowed fees for his services as follows: For the first corner established in accordance with Article 10 of Chapter 3 of this title, one dollar; for each additional corner, fifty cents; for every survey less than eighty chains, two dollars and fifty cents; for every chain over eighty chains, three cents per chain; for calculating the quantity of each tract of land, one dollar; for recording field notes of each survey, twenty cents per folio; for making a certified copy of field notes, twenty cents per folio; for making or copying maps or plats, fifty cents per hour; for traveling to place of survey, for each mile in going only, fifteen cents; for surveying roads and county boundaries, including the preparing and recording of plats and field notes, for each day necessarily engaged in field work, six dollars; for surveys or re-surveys of town lots, three dollars for the first lot and one dollar for each additional lot.

Historical: Laws 1899, 295, Sec. 10; re-enacting Laws 1897, 19, Sec. 10. "Article 10 of Chapter 3 of this title"

for "act", as the balance of the act from which this section is taken is found in that article.

Fees of Justice of the Peace.

Sec. 2126. A justice of the peace may charge, demand and receive the following fees for services performed in discharge of the duties imposed upon him by law: For filing each paper, fifteen cents; for issuing any summons, writ or process by which action is commenced, fifty cents; for entering such cause on his docket, including all docket entries before judgment, fifty cents; for subpoena to witness, twenty-five cents; for administering an oath or affirmation, including jurat

and certificate, fifteen cents; for issuing writ of attachment, or of arrest, or for delivery of property, one dollar; for entering any final judgment, for each folio, twenty-five cents; for taking and approving any bond or undertaking directed by law to be taken or approved by him, fifty cents; for taking justification to bond or undertaking when required by law, after exception to sureties, fifty cents; for swearing a jury, fifty cents; for taking deposition, per folio, twenty cents; for entering satisfaction of judgment, twenty-five cents; for copy of judgment, order, docket, proceedings, or paper in his office, per folio, twenty cents; for issuing commission to take testimony, fifty cents; for making up and transmitting transcript and papers on appeal, two dollars; for making up and transmitting papers on change of venue, including copy, certificate and order, one dollar; for issuing search warrant, fifty cents; for issuing an execution, fifty cents; for celebrating marriage and returning certificate to the recorder, five dollars; for all services and proceedings before a justice of the peace, in a criminal action or proceeding on examination, when an examination is not waived, or trial upon an issue of fact, six dollars; when an examination is waived or there is a plea of guilty, three dollars; for taking bail after commitment in criminal cases, fifty cents; for entering an action without process, fifty cents; for entering judgment by confession on only an affidavit as required in the District Court, in full for all services before execution, one dollar.

Historical: Rev. St. 1887, Sec. 2135.
See 11 Ter. Ses. (1881) 248, Sec. 1.

Fees of Constable.

Sec. 2127. A constable is allowed and may collect and receive for any services required of him by law, fees as follows: For serving summons in civil cases, for each defendant, fifty cents; for summoning a jury before a justice of the peace, one dollar and fifty cents; for taking a bond required to be taken, fifty cents; for summoning each witness, twenty-five cents; for serving an attachment against the property of the defendant, one dollar; for receiving and taking care of property on execution, attachment or order, his actual necessary disbursements and expenses, to be allowed by the justice who issued the process, upon satisfactory proof that such charges are correct, not to exceed two dollars per day; for collecting all sums of money on execution, three per centum to be charged against the defendant in the execution; for serving a warrant or order for the delivery of personal property or making an arrest in civil cases, one dollar; constables must receive mileage at the rate of twenty cents per mile for each mile necessarily traveled, in going only; for services in criminal cases, the same fees as sheriffs are authorized to receive for like services; for all other services, except attending court, the same fees as are allowed sheriffs for similar services.

Historical: Rev. St. 1887, Sec. 2136.
See 8 Ter. Ses. (1875) 566, Sec. 34.
The provision fixing the constable's mileage is taken from Rev. St. Sec. 2126. The reason for the change is given in the note, *infra*. No change is made in the provision for services in

criminal cases except to omit the words "and travel" for the reason that sheriff's fees under the amendment of 1891, and 1899 referred to in the case in the note, are the same as under Rev. St. 2126, and the reference therefore remains accurate.

Cross Reference: Fees for inspecting cattle for shipment: Sec. 1248. Fees with reference to estrays: Sec. 1299.

Fees in Criminal Cases: This section allows constables to charge in criminal cases the same fees which

were allowed sheriffs in such cases by Rev St. Sec. 2126, and does not allow constables the fees which sheriffs were entitled to under the act of 1891, which amended Sec. 2126. *Ellis v. Bingham Co.* (1900) 7 Ida. 86; 60 Pac. 79.

Fees to Be Prepaid.

Sec. 2128. The officers mentioned in this title are not in any case, except for the State or county, to perform any official service unless upon prepayment of the fees prescribed for such services by law, except as in the succeeding sections provided; and *Provided further*, That the Attorney General or any prosecuting attorney may cause subpoenas to be issued on behalf of the State, without paying or tendering fees in advance to any officers, and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

Historical: Rev. St. 1887, Sec. 2137. The words "by law" are transposed to clarify the construction, and the further proviso is taken from Rev. St. Sec. 2146, the balance of which relates to witness' fees, and is transferred to C. C. P. Sec. 6143.

Cited: *Rhea v. Board of Co. Commrs.* (1906) 12 Ida. 455; 88 Pac. 89.

Not Repealed: This section is not amended or repealed by Laws 1891,

175, which fixes the fees of county officers. *Naylor v. Vermont etc. Co.* (1898) 6 Ida. 251; 55 Pac. 297.

Action for Fees: This section entitles officers to demand the prepayment of fees as a condition precedent to the performance of service, but does not preclude such officers, in case they do not demand prepayment, from afterwards maintaining an action to recover the fees allowed for such services. *Ib.*

No Fee in Habeas Corpus.

Sec. 2129. No fee or compensation of any kind must be charged or received by any officer for duties performed or services rendered in proceedings in habeas corpus; nor shall any county officer charge any fee against, or receive any compensation whatever from, the State for any services rendered in any action or proceeding in which the State of Idaho, or any State board, or State officer in his official capacity, is a party.

Historical: Rev. St. 1887, Sec. 2138; amended Laws 1901, 162, Sec. 1.

California Legislation: Same through "habeas corpus", line 3, rest

omitted: Pol. Code 1872, Sec. 4333; Deering's Code, *ib.*; Kerr's Code, *ib.*

Cited: *Naylor v. Vermont etc. Co.* (1898) 6 Ida. 251; 55 Pac. 297.

No Fee to Be Charged to Pensioners.

Sec. 2129a. No judge or clerk of court, county clerk, county auditor or any other county officer shall be allowed to charge any honorably discharged soldier or seaman, or the widow, orphan or legal representative thereof, any fee for administering any oath or giving any official certificate for the procuring of any pension, bounty or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars, nor more than fifty dollars.

Historical: Laws 1899, 242, Secs. 1, 2; re-enacting Laws 1895, 36, Secs. 1, 2.

Officers Must Publish Table of Fees.

Sec. 2130. Every officer whose fees are herein ascertained must publish and set up in his office fair tables of his fees, according to this title, within one month after he enters upon the duties of his office, in some conspicuous place, for inspection of all persons who have business in his office, upon pain of forfeiting for each day a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county, with costs.

Historical: Rev. St. 1887, Sec. 2139.

Execution for Fees.

Sec. 2131. If any clerk, sheriff, justice of the peace, or constable, shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor, in his own name, against the party from whom they are due, to be issued from the court in which the action is pending.

Historical: Rev. St. 1887, Sec. 2140.

Not Repealed: This section is not repealed by Laws 1891, 175, which

fixes the fees of county officers. *Naylor v. Vermont etc. Co.* (1898) 6 Ida. 251; 55 Pac. 297.

Folio Defined.

Sec. 2132. The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every three figures necessarily used as a word. Any portion of a folio, when in the whole draught or paper, should there not be a complete folio, and when there should be an excess over the last folio exceeding a quarter, shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

Historical: Rev. St. 1887, Sec. 2141.

Limitation on Mileage of Officer.

Sec. 2133. When any sheriff, constable or coroner serves more than one process in the same case, not requiring more than one journey from his office, he shall receive mileage only for the most distant service.

Historical: Rev. St. 1887, Sec. 2142.

Receipt for Fees.

Sec. 2134. Every officer upon receiving any fees for official duty or services, may be required by the person making the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they respectively accrued, and shall receipt for the same; and if he refuses or neglects to do so, when required, or shall receive illegal fees, he shall be liable to the party paying for three times the amount so paid.

Historical: Rev. St. 1887, Sec. 2144.

CHAPTER 5.

OTHER COUNTY CHARGES.

Section

2135. Amounts must be presented to commissioners.

Section

2136. County charges enumerated.

Accounts Must Be Presented to Commissioners.

Sec. 2135. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as provided by law.

Historical: Rev. St. 1887, Sec. 2160.

California Legislation: Similar: Pol. Code 1872, Sec. 4343; Deering's Code, ib.; Kerr's Code, ib.

Audit of Claims: The board of commissioners have authority to audit a

claim for the publication of the delinquent tax list, although the contract for such publication is made by the assessor. *Jolly v. Woodward* (1895) 4 Ida. 496; 42 Pac. 512.

County Charges Enumerated.

Sec. 2136. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title.

2. The compensation allowed by law to constables and sheriffs for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by or at the request of the prosecuting attorneys, and for other services in relation to criminal proceedings.

3. The expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail.

4. The compensation allowed by law to county officers in criminal proceedings, when not otherwise collectible.

5. The sum required by law to be paid to grand jurors and indigent witnesses in criminal cases.

6. The accounts of the coroner of the county, for such services as are not provided to be paid otherwise.

7. All charges and accounts for services rendered by justices of the peace or probate judges for services in the examination of persons charged with crime, not otherwise provided for by law.

8. The necessary expenses incurred in the support of county hospitals and the indigent sick, and the otherwise dependent poor, whose support is chargeable to the county.

9. The contingent expenses, necessarily incurred for the use and benefit of the county.

10. Every other sum directed by law to be raised for any county purpose, under the direction of the board of county commissioners, or declared to be a county charge.

Historical: Rev. St. 1887, Sec. 2161; amended Laws 1899, 116, Sec. 7. Omitting "or this act" in subd. 1, as the act referred to is included in this title.

California Legislation: Similar: Pol. Code 1872, Sec. 4344; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Expenses in-

curred in carrying out the provisions of the chapter relating to county boards of health are payable out of current expense fund: Sec. 1113. Expenses of furnishing court rooms when the same are not provided by the commissioners: Sec. 3872. Expense of removing prisoners from one county jail to another payable by county from which removal is made:

Sec. 8547. Expense of sending insane defendant in criminal action to insane asylum, and maintaining him there, a county charge: Sec. 8200. Expense of keeping prisoners to be paid out of county treasury: Sec. 8539.

Cited: *Cunningham v. Moody* (1891) 3 Ida. 125; 35 Am. St. Rep. 269; 28 Pac. 395; *Jolly v. Woodward* (1895) 4 Ida. 496; 42 Pac. 512.

County Charges: The claim of a physician for services in attending a coroner's inquest, when subpoenaed by the coroner under Sec. 8379, and pronouncing a professional opinion on the cause of death, is a charge against the county to the extent of the reasonable value of the physician's services. (Quarles, J., dissents.) *Fairchild v. Ada Co.* (1898) 6 Ida. 340; 55 Pac. 654.

The claim of an executive agent for expenses incurred in going to another State under the requisition of the Governor to bring back a fugitive from justice is not a county charge, but is a State charge under Rev. St. Sec. 8425. *Kroutinger v. Board of Examiners* (1902) 8 Ida. 463; 69 Pac. 279.

Reports of Officers: The officer's report should contain a detailed statement of all fees and commissions earned by him and the verification should be so worded as to verify that fact; but if the report is insufficient, the commissioners should notify the officer and permit him to supply the defect, and should not summarily disallow claims based thereon. *Campbell v. Commrs. Logan Co.* (1894) 4 Ida. 181; 37 Pac. 329.

CHAPTER 6. THE COUNTY POOR.

Section

- 2137. Contract for maintenance of poor.
- 2138. Employment of physician.
- 2139. Accounts and reports of keeper.
- 2140. Application for county aid.
- 2141. Investigation of application: Certificate.

Section

- 2142. Provision for relief.
- 2143. Certified claims only to be allowed.
- 2144. Application by third person.
- 2145. Discharge of pauper.
- 2146. Treatment of paupers.

Contract for Maintenance of Poor.

Sec. 2137. The board of county commissioners, in their respective counties, may contract for the care, protection and maintenance of the indigent sick, or otherwise dependent poor of the county. They must require the contractor to enter into a bond to the county with two or more approved sureties, in such sum as the board may fix, conditioned for the faithful performance of his duties and obligations as such contractor, and require him to report to the board quarterly all persons committed to his charge, showing the cause and nature of their confinement, and the expense attendant upon their care and maintenance.

Historical: Rev. St. 1887, Sec. 2170. See 2 Ter. Ses. (1864) 424, Sec. 3.

California Legislation: See Pol. Code 1872, Sec. 4344; subd. 8; Deering's Code, ib.; Kerr's Code, ib.

Contract for Care of Poor: One who contracts to keep the county poor is not entitled to additional compensa-

tion for services in taking care of an indigent sick person who is a citizen of another State, although such person is committed to his care under a certificate, proper in form, from a justice of the peace. *Board of Co. Commrs. Logan Co. v. McFall* (1894) 4 Ida. 71; 35 Pac. 691.

Employment of Physician.

Sec. 2138. The board must employ a physician to attend, when necessary, upon the inmates of the poor house or county hospital. They must provide for the employment, at some kind of manual labor, of such of the inmates as are capable and able to work, and the attending physicians must certify to the keeper or lessee of the poor farm the names of such of the inmates as are incapable of manual

labor, and when any such inmate becomes capable the physician must certify the fact.

Historical: Rev. St. 1887, Sec. 2171.
See 12 Ter. Ses. (1883) 78, Secs. 3,
4, 5.

California Legislation: See Pol.
Code 1872, Sec. 4344; subd. 8; Deering's
Code, ib.; Kerr's Code, ib.

Accounts and Reports of Keeper.

Sec. 2139. The keeper of the county poor farm, poor house or hospital, must keep a correct account of all receipts and expenditures in connection therewith, and make full and complete reports thereof quarterly to the board of county commissioners.

Historical: Rev. St. 1887, Sec. 2172.
See 12 Ter. Ses. (1883) 78, Sec. 6.

Application for County Aid.

Sec. 2140. Any sick or indigent person desiring aid from any county of this State, must, before such aid can be given, make a written application to the probate judge, the clerk of the board of county commissioners, or to any justice of the peace in the precinct where such applicant may reside, setting forth and describing all the property, real, personal and mixed, wherever it is situated, owned in whole or in part by such applicant, or in which he or she has any legal or equitable interest; if such applicant have no available property, real or personal, then he must declare his indigency and destitution, which must be signed by the party or parties making such application and sworn to before some officer authorized by the laws of this State to administer oaths, and filed in the office of the clerk of the board of county commissioners.

Historical: Rev. St. 1887, Sec. 2173.
13 Ter. Ses. (1885) 127, Sec. 1.

Investigation of Application: Certificate.

Sec. 2141. It is the duty of the probate judge, clerk of the board of county commissioners, or the justice of the peace to whom such application is made, to immediately investigate the grounds of such application, and for such purpose he may require the applicant, and such other persons as may be deemed necessary, to testify under oath, and if such officer is fully satisfied that such applicant is really sick, indigent and in destitute circumstances, and would suffer unless aided by the county, he must file a certificate to that effect with the clerk of the board of county commissioners of such county, and in case said board of county commissioners is not in regular session at the time of the date of such certificate, the officer to whom said application is made may, in his discretion, authorize the applicant to be placed in the poor house or hospital of the county, or, if the county is not provided with a poor house or hospital, he may authorize the expenditure of any sums not exceeding the sum of forty dollars in the aggregate, to provide for the immediate necessities of such applicant, and must present his bill for such expenditure to the board of county commissioners, duly verified under oath, and the board must audit and pay such bill out of the proper fund of such county at their next regular session.

Historical: Rev. St. 1887, Sec. 2174.
13 Ter. Ses. (1885) 127, Sec. 2.

Provision for Relief.

Sec. 2142. The county commissioners of such county must, after the filing of the certificate as aforesaid, if in their judgment the applicant is sick and indigent, and would suffer if not aided by the county, make such provisions for his relief as may be necessary under the circumstances.

Historical: Rev. St. 1887, Sec. 2175.
13 Ter. Ses. (1885) 127, Sec. 3.

Certified Claims Only to Be Allowed.

Sec. 2143. The county commissioners must not allow any claim or demand against the county for services rendered to any sick or indigent person who has not previously obtained from the probate judge, clerk of the board of county commissioners, or the justice of the peace, as aforesaid, the certificate heretofore mentioned, and must not allow any claim or demands whatsoever against the county for any expense incurred by, or in behalf of, any sick or indigent person before the filing of the application and certificate aforesaid.

Historical: Rev. St. 1887, Sec. 2176.
See 13 Ter. Ses. (1885) 127, Sec. 4.

Application by Third Person.

Sec. 2144. If any sick and indigent person or persons, desiring assistance from any county in this State, is unable from illness to make the application in writing required in this chapter, such application may be made for him or on his behalf, by any other person under oath.

Historical: Rev. St. 1887, Sec. 2177.
See 13 Ter. Ses. (1885) 127, Sec. 6.

Discharge of Pauper.

Sec. 2145. Every person admitted to the county poor house or hospital must be discharged therefrom by the keeper:

1. At his own request, if capable of taking care of himself, or if his friends or relatives are willing to take care of him;

2. Whenever, in the judgment of the keeper and attending physician, the person is capable of supporting himself; but in such case the county commissioners have the power to revise the act of the keeper and attending physician, and can return a person who, in their judgment, has been improperly discharged, or may discharge any one that, in their judgment, should no longer be an inmate of the poor house or hospital.

Historical: Rev. St. 1887, Sec. 2178.
See 12 Ter. Ses. (1883) 78, Sec. 9.

Treatment of Paupers.

Sec. 2146. The treatment of all inmates of the poor house and hospital must be kind and humane; they must be supplied with comfortable clothing, sufficient bedding and plain, substantial food, and must not be required to perform labor to an extent that is detrimental to health; but the keeper has power to compel those who are able to perform labor to perform the same by reasonable and humane coercion.

Historical: Rev. St. 1887, Sec. 2179.
See 12 Ter. Ses. (1883) 78, Sec. 10.

TITLE 12

TOWN SITES

Section

- 2147. Entry of townsites.
- 2148. Conveyance: How executed.
- 2149. Notice of entry.
- 2150. Claims for lots.
- 2151. Appointment of appraisers.
- 2152. Appraisement of unclaimed lots.
- 2153. Notice of sale.
- 2154. Conduct of sale: Re-appraisement and re-sale.
- 2155. Purchase by entryman.
- 2156. Proceeds of sale.
- 2157. Suits to determine adverse claims.
- 2158. First settler entitled to land.

Section

- 2159. Notice to commence suit.
- 2160. Service of summons.
- 2161. Conveyance of land in suit.
- 2162. Expense of entry a charge on land.
- 2163. Tender of charges and fees.
- 2164. Conveyance to claimants.
- 2165. Rights of trustee as claimant.
- 2166. Trustee holds title from entry.
- 2167. Costs of suit.
- 2168. Contracts for conveyance.
- 2169. Successor in office succeeds to trust.

Entry of Town Sites.

Sec. 2147. It is the duty of the corporate authorities of any city or incorporated town, or the probate judge of any county in which is situated any unincorporated town, to enter at the proper land office of the United States such quantity of land as the inhabitants of such city or town may be entitled to claim, in the aggregate, according to the population, in the manner required by the laws of the United States and the regulations prescribed by the Secretary of the Interior of the United States, and make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect this title and Chapter 8 of Title 32 of the Revised Statutes of the United States, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by the laws of Congress.

Historical: Rev. St. 1887, Sec. 2200.
(See 8 Ter. Ses. (1875) 698, Sec. 1);
amended Laws 1905, 84, Sec. 1.

Conveyance: How Executed.

Sec. 2148. Any such corporate authorities, or judge, holding the title to any such lands in trust, as declared in said acts of Congress, must, by a good and sufficient conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person entitled thereto, according to his rights or interest in the same as they exist, in law or equity, at the time of the entry of such lands, and when any parcel or share of such lands is occupied or possessed by one or more persons, claiming the same by grant, lease or sale, the respective rights and interests of such persons, in relation to each other in the same, are not changed or impaired by any such conveyance. Every conveyance, by such corporate authorities or

judge, pursuant to the provisions of this title, must be so executed and acknowledged as to admit the same to be recorded, and if made previous to the issuing of the patent for such lands, it must contain a covenant that the grantor will, after the issuing of such patent, execute, acknowledge and deliver to the grantee, his heirs or assigns, such further conveyance as may be or become necessary to fully vest and perfect the title to the lands therein described in the grantee, his heirs or assigns.

Historical: Rev. St. 1887, Sec. 2201, 8 Ter. Ses. (1875) 698, Sec. 2.

California Legislation: See Pol. Code 1872, Sec. 4442; Deering's Code, ib.; Kerr's Code, ib.

Nature of Trust: The trust imposed on the mayor of an incorporated town under the townsite law, is for the benefit of the inhabitants, first as individuals and then, collectively, as a community. The title to the occupied lots is vested in the trustee for the benefit of the several occupants at the time of the entry, and neither the surveyor nor the mayor

can deprive them of that title, *Scully v. Squier* (1907) 13 Ida. ...; 90 Pac. 575.

Survey of Townsite: The surveyor, in platting a townsite, cannot make a paper street and deprive the actual occupants of vested rights in the premises occupied by them; his only authority is to plat the town in conformity to the use and occupancy of the lots and blocks, and he cannot establish streets through and over buildings, nor cut off any portion or part of a building for street purposes. *Ib.*

Notice of Entry.

Sec. 2149. At any time after the entry of such lands, and before three months from the date of the receipt of a patent therefor, the corporate authorities or judge entering the same, must give public notice of such entry by posting the notice thereof in at least three public places in said town, and by publishing such notice in a newspaper printed and published in the county in which such town is situated, or in case there is no such newspaper, then in some newspaper printed and published at the seat of government; such notice must be published once in each week for at least three successive weeks, and must contain the name of the town and an accurate description of the lands so entered as the same are described in the certificate of entry, duplicate receipt for the purchase money thereof issued at the time of entry, or in the patent in case patent has issued.

Historical: Rev. St. 1887, Sec. 2202. (See 8 Ter. Ses. (1875) 698, Sec. 3); amended Laws 1905, 84, Sec. 2.

Claims for Lots.

Sec. 2150. Every person, association or company claiming to be entitled to such lands, or to any block, lot, share or parcel thereof, must, within sixty days after the first publication of such notice, in person or by duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he claims to have an interest, and the specified right, interest or estate therein, which he claims to be entitled to receive, also a brief statement of the facts upon which such right, interest or estate depends for its validity, and deliver the same to such corporate authorities or judge, and all persons failing to sign and deliver such statement, within the time specified in this section, are, as against any claimant, forever barred the right of claiming or recovering such lands, or any interest therein. In case any lots,

pieces or parcels of land remain unclaimed and unconveyed at the end of said sixty days, all such lots shall revert to and become the property of such town.

Historical: Rev. St. 1887, Sec. 2203.
(See 8 Ter. Ses. (1875) 698, Sec. 4);
amended Laws 1905, 84, Sec. 3.

Appointment of Appraisers.

Sec. 2151. The corporate authorities of such town, in case the same be incorporated, shall appoint, by order, resolution or ordinance, a board of appraisers, to consist of three freeholders or householders of such town, who shall have no interest in such unclaimed or unconveyed lots or parcels of land, or the improvements thereof. Each of said appraisers shall take an oath to faithfully discharge his duties as such appraiser, and shall file such oath in the office of the clerk of such municipality before commencing his duties as such appraiser. In case such appraisers should fail or neglect to make appraisements hereinafter specified and file the same with said clerk for a period of more than ten days after their appointment, then said corporate authorities may appoint a new board of appraisers for the purposes herein provided. It shall be the duty of such corporate authorities to appoint such appraisers within thirty days after the time has expired for persons to present claims for lots, pieces or parcels of land in such town.

Historical: Laws 1905, 84, Sec. 4.
Omitting the concluding clause relating to appointment of appraisers with-

in thirty days after the taking effect of the act, as now obsolete.

Appraisement of Unclaimed Lots.

Sec. 2152. Said appraisers shall appraise all lots, pieces or parcels of land, unclaimed or not conveyed by virtue of any law, in such town, at their just and full cash value, and file their written appraisement thereof with said clerk. Said appraisement shall contain a description of each lot, piece or parcel of land so appraised, and a statement of the cash value of the same. Said appraiser shall make a separate statement of the value of such lots, pieces and parcels of land without improvements, and the value of such improvements, and the aggregate value of both. There shall be attached to such appraisement a written affidavit of said appraisers verifying each statement of such appraisement and alleging that each of such lots and parcels of land is appraised at its just and full value. This appraisement shall be required only in cases where the time has expired by law for claimants to file their statements.

Historical: Laws 1905, 84, Sec. 5.

Notice of Sale.

Sec. 2153. The mayor or president of the board of trustees, as the case may be, shall, upon the filing of such appraisements, give notice signed in his official capacity of the time and place of sale of such lots and parcels of land by an advertisement published once a week for three successive weeks in some newspaper published in the county where such town is situated, or, if no newspaper is published in said county, then in the paper published nearest such town.

Such sale shall be advertised to be made at some public place in said town, and to be sold at some specified time between the hours of sunrise and sunset.

Historical: Laws 1905, 84, Sec. 6.

Conduct of Sale: Reappraisement and Resale.

Sec. 2154. Such lots or parcels of land shall be sold at public vendue to the highest bidder for cash, and shall be offered for sale singly, unless a greater price can be obtained by selling several lots or parcels of land together, in which case several lots or parcels can be sold together after an attempt has been first made to sell the same singly. Such sale may be continued, if necessary, from day to day, for a period not to exceed three days at any one sale. In case all said lands are not sold at the first sale, the sale of the remaining lands shall be advertised as many times as may be necessary to sell said lands, and all sales subsequent to the first sale shall be advertised and conducted the same as the first sale. No lot or parcel of land shall be sold at less than its appraised value. A new appraisement may be had of all lands remaining unsold: *Provided*, That such new appraisement shall not be made oftener than once every three months. Such new appraisement shall be made by a new board of appraisers, to be appointed in the same manner as the first board of appraisers were appointed, or by the old board of appraisers.

Historical: Laws 1905, 84, Sec. 7. "Once every" inserted before "three months" in the proviso. The concluding clause, "or by the old board of

appraisers" has been transposed. Both changes are made to more clearly express the meaning.

Purchase by Entryman.

Sec. 2155. In all cases where, subsequent to the time provided by law for persons to claim lots on such townsite, any person may have entered thereon and improved any lots belonging to such town, such person, after the report of said board of appraisers, and prior to public sale, may purchase any such lots from the corporate authorities of such town for cash, at the appraised values of such lots, pieces or parcels of land, inclusive of improvements, unless there shall be adverse claimants to any such lots, in which case the respective rights of such claimants shall be determined as hereinafter provided.

Historical: Laws 1905, 84, Sec. 8.

Proceeds of Sale.

Sec. 2156. The proceeds received from such sales shall be disposed of as follows: (1) They shall be applied to pay the expenses of said sale. (2) To discharge any outstanding claims incurred in entering the town site of said town. (3) The surplus, if any, shall be a special fund, to be held by such corporate authorities, to be used in making public improvements in such town.

Historical: Laws 1905, 84, Sec. 9.

Suits to Determine Adverse Claims.

Sec. 2157. In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit against the adverse claimant or claimants, in the District Court

of the judicial district, in the county in which the land shall be situated: *Provided*, That no Judge of the District Court who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced within such town, or who is a party to any action brought to determine the right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any action brought to determine any such claims, by or between any parties whomsoever; but in all such cases, if the cause shall be pending in a District Court, the Judge thereof shall order all papers, with a transcript of the record in said cause, to be transmitted to another judicial district, as in cases of change of venue: *Provided*, That the laws applicable to a change of venue shall apply to actions brought under this title. Suits shall be brought against adverse claimants as defendants, and it shall not be necessary to make the probate judge or corporate authorities parties thereto. The complaint must show what interest or estate in the lands in controversy the plaintiff claims.

Historical: Rev. St. 1887, Sec. 2204.
(See 8 Ter. Ses. (1875) 698, Sec. 5);
amended Laws 1905, 84, Sec. 10.

First Settler Entitled to Land.

Sec. 2158. Upon the trial in such action either party may give in evidence the statement mentioned in this title, deposited by the other, or by the person under whom he claims, with the corporate authorities or judge holding the title to the lands in controversy therein, and the person who made the first claim to, and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, must in such actions be deemed to have the right to such lands, provided there has been no abandonment thereof since such settlement.

Historical: Rev. St. 1887, Sec. 2205.
8 Ter. Ses. (1875) 698, Sec. 6.

California Legislation: See Pol.

Code 1872, Sec. 4442; Deering's Code, ib.; Kerr's Code, ib.

Notice to Commence Suit.

Sec. 2159. In case suits shall not be brought for the purpose of settling or determining any controversy to any such lands by either of the adverse claimants, within sixty days after the expiration of the time for filing the statement as provided in Section 2150, it shall be the duty of the judge or corporate authorities to give notice to the adverse claimant last filing his claim, or if there be more than one adverse claim filed, then to the last adverse claimant, directing him to commence his action against the other claimants as defendants to determine their respective rights to said lands, within twenty days from service of notice on him, and in case such adverse claimant neglects or refuses to commence the action within the time specified, he shall be deemed to have waived and relinquished all right, title, interest and estate in the lands so in controversy, and be forever barred from asserting or claiming any right, title, interest or estate therein. Such notice may be served by the sheriff of the county in which said town is situated, or by any person over the age of twenty-one years, and proof of such service may be made as in case of summons issued out of the District Court. If the person or sheriff to

whom said notice is given to serve, shows by affidavit or return that such adverse claimant can not be found in the county in which said lands are situated, service of such notice shall be by publication thereof for three weeks in some newspaper published in the county where the lands are situated, and if no paper be published in said county, then by posting such notice in three public places in the town where the lands are situate, and in addition thereto said notice shall be mailed to such adverse claimant at his residence or usual place of abode. In case there be more than one adverse claimant, and the last neglect or refuse to commence his action after service of notice as aforesaid, said judge or corporate authority shall serve like notice on the next last adverse claimant until all have been notified as aforesaid. The provisions of this section shall apply to, and have the same effect of notice and forfeiture as against any adverse claimants to, lands and lots in town sites heretofore entered under said act of Congress, after notice shall have been served as aforesaid.

Historical: Rev. St. 1887, Sec. 2206.
(See 8 Ter. Ses. (1875) 698, Sec. 7);
amended Laws 1905, 84, Sec. 11.

Service of Summons.

Sec. 2160. Whenever complaint shall be filed in any action as provided in this title, summons shall issue against the proper parties, and shall be served upon the proper person or persons named therein, as in other cases provided by law, or upon the agent or attorney of such person or persons who shall have filed the statements as required in Section 2150; and in case service can not be had upon the defendant, his agent or attorney, service may be made by publication thereof as provided by law.

Historical: Laws 1905, 84, Sec. 12.		mons: Sec. 4144; publication: Secs.
Cross Reference: Service of sum-		4145-4146.

Conveyance of Land in Suit.

Sec. 2161. The corporate authorities or probate judge, as the case may be, shall convey said lands in accordance with the judgments entered in such actions: *Provided, however,* In case of appeals or writs of error to the Supreme Court, such conveyance shall not be made until final determination by the decision of the Supreme Court.

Historical: Laws 1905, 84, Sec. 13.

Expense of Entry a Charge on Land.

Sec. 2162. As soon as may be after the expiration of sixty days after the first publication of the notice mentioned in Section 2149, the corporate authorities or judge holding the title to the lands described in such notice must make a true statement in writing containing a true account of all moneys expended in the acquisition of the title and the administration or execution of the trust to that time, including all moneys paid for the purchase of such land, all necessary traveling expenses, all moneys paid for posting and publishing notices, and the proof thereof, all costs of surveys and platting such lands, all necessary attorney fees and costs of suit or actions necessarily prosecuted or defended in obtaining title to said lands, and for all

other necessary and proper expenses incident to such trust, and also a true account of his time and service in the business of such trust to that time. The whole amount of such account for moneys so advanced, and reasonable charges for compensation as herein provided, is a charge upon the lands so held in trust, in favor of the trustee, and must be paid by the several claimants entitled to such lands who have filed their claims within the time mentioned in Section 2150, in proportion to the several quantities of shares thereof to which they are respectively entitled: *Provided, however,* In incorporated cities or villages where the lands claimed are, owing to location, contour of surface or other causes, of different values, the city council, trustees or other legislative body of such city or village, may by ordinance fix the part or portion of the moneys so expended by such trustee and which are a charge against such lands, as herein provided, which shall be charged to each parcel of land, which shall be as near as may be in accordance with the relative values of the different parcels of land.

Historical: Rev. St. 1887, Sec. 2207;
amended Laws 1905, 84, Sec. 14.

Tender of Charges and Fees.

Sec. 2163. Before the corporate authorities or judge holding any such lands in trust as aforesaid can be required to execute, acknowledge or deliver any conveyance thereof, or of any lot, block, parcel or share thereof, as hereinbefore mentioned, to any person claiming to be entitled to such conveyance, such person must pay or tender the sum of money chargeable upon the part thereof to be conveyed according to the statement or account mentioned in the last section, together with interest on each of the money items of such account at the rate of twenty-four per cent per annum from the time when the same accrued, and also such further sums as are a reasonable compensation for preparing, executing and acknowledging such conveyance, and the fees of the officer taking the acknowledgment thereof.

Historical: Rev. St. 1887, Sec. 2208.
8 Ter. Ses. (1875) 698, Sec. 9.

Code 1872, Sec. 4442; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: See Pol.

Conveyance to Claimants.

Sec. 2164. After the expiration of sixty days from the time of the first publication of the notice, the corporate authorities or judge holding the title to the lands described therein, must, upon a reasonable demand or request, and upon the payment or tender of the moneys mentioned in the last preceding section, execute, acknowledge and deliver to each and every claimant, association or company of claimants of such lands, or of any lot, block, parcel or share thereof, a conveyance thereof, according to the statement made and deposited as aforesaid: *Provided,* That no such conveyance must be executed, acknowledged or delivered for any part, lot, block or share of such lands to which there are adverse claimants, until the controversy thereon is settled or determined in the manner hereinbefore prescribed, and whenever any such controversy is so settled or determined, the said corporate authorities or judge must, upon the like

demand or request, and the like payment or tender, convey the land, or interest, or share therein, the right to which has been thus ascertained, to the person thereby determined to be entitled to the same.

Historical: Rev. St. 1887, Sec. 2209.
8 Ter. Ses. (1875) 698, Sec. 10.
California Legislation: See Pol.

Code 1872, Sec. 4442; Deering's Code, ib.; Kerr's Code, ib.

Rights of Trustee as Claimant.

Sec. 2165. In case any judge or other officer who enters any such lands under the provisions of the acts of Congress and thus becomes the sole trustee thereof, is possessed of, or entitled to, any part, lot, block or share thereof, according to and by virtue of the provisions of this title, and the same is not claimed adversely to him by any person, he is seized and possessed of the title thereto and estate therein, to his own use in fee simple, absolute, free and discharged of such trust, and no conveyance other than the patent of the lands including the same is necessary to perfect his absolute title thereto. In case any such land or share therein so claimed by said judge or other officer, is claimed by any other person adversely to him, the conflicting claims must be adjusted or determined by settlement, arbitration or action as hereinbefore prescribed.

Historical: Rev. St. 1887, Sec. 2210.
8 Ter. Ses. (1875) 698, Sec. 11.
California Legislation: See Pol.

Code 1872, Sec. 4442; Deering's Code, ib.; Kerr's Code, ib.

Trustee Holds Title From Entry.

Sec. 2166. For the purpose of determining the rights of adverse claimants to any land so entered, the corporate authorities or judge hereinbefore mentioned is deemed to possess and hold the title to such lands in trust from the time of the entry thereof.

Historical: Rev. St. 1887, Sec. 2211.
8 Ter. Ses. (1875) 698, Sec. 12.
California Legislation: See Pol.

Code 1872, Sec. 4442, Deering's Code, ib.; Kerr's Code, ib.

Costs of Suit.

Sec. 2167. The costs in the actions mentioned in this title are recoverable as in other civil actions.

Historical: Rev. St. 1887, Sec. 2212.
8 Ter. Ses. (1875) 698, Sec. 13.
California Legislation: See Pol.
Code 1872, Sec. 4442, Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Costs in civil actions: Secs. 4900-4919.

Contracts for Conveyance.

Sec. 2168. Every person in whom the title to any lands is vested under and by the provisions of this title, may be compelled to specifically perform any prior valid agreement for a conveyance.

Historical: Rev. St. 1887, Sec. 2213.
See 8 Ter. Ses. (1875) 698, Sec. 14.
California Legislation: See Pol.

Code 1872, Sec. 4442, Deering's Code, ib.; Kerr's Code, ib.

Successor in Office Succeeds to Trust.

Sec. 2169. The successor in office of any judge, mayor or other officer who entered lands under said laws of the United States, or

who was trustee for the execution of the trust in that behalf, whether such officer or trustee acted under this title, or under any other general law, or any local or special act relating to any city or incorporated town, shall succeed to the trust, and shall have authority to execute the same as fully as his predecessor, the original trustee, might have done while on office; and when a mayor's or other trustee's deed of any block, lot, share or parcel of any such town site has been lost or cannot be found, and there is no record thereof in the office of the county recorder, such successor, upon application to him in writing, duly verified, showing that no mayor's or other trustee's deed can be found to the part or parcel of such town site described in the application, and that no such deed thereto is of record in the office of the recorder of the county, and that the applicant, his ancestor, predecessor or grantor has been in the quiet, peaceable and undisturbed possession of said premises under claim of title for the full period of five years next before the application, must, by good and sufficient conveyance, grant and convey the title of the premises described in the application to the applicant, which conveyance must be executed and acknowledged, and shall take and have effect as provided by Section 2148, for which and the acknowledgment thereof the trustee shall be entitled to receive a fee of five dollars from the applicant: *Provided*, That in every such application for a deed under the provisions of this section, where an adverse claim to such parcel of said townsite shall be made to such mayor for the same, the mayor in every such case shall remit the parties claiming deeds to the same to a court of competent jurisdiction to settle the same, and when so determined, then the said mayor shall execute such deed to the prevailing party.

Historical: Rev. St. 1887, Sec. 2214.
(See 8 Ter. Ses. (1875) 698, Sec. 15);

amended Laws 1899, 141, Sec. 1; re-
enacting Laws 1890-91, 201, Sec. 1.

TITLE 13

CITIES AND VILLAGES

Chapter

1. Organization of cities.
2. Council and officers of city.
3. Police courts.
4. Organization of villages.
5. Powers of cities and villages.
6. Municipal elections.
7. Municipal finances.
8. General provisions governing cities and villages and their officers.

Chapter.

9. Changing names of municipalities.
10. Consolidation of municipalities.
11. City and village plats.
12. Municipal improvement bonds.
13. Street improvement bonds.
14. Sewer construction bonds.
15. Installment payments of improvement assessments.

Note: Title 13, Pol. Code. Rev. St. 1887, treated of the subject "Towns and villages." This title was amended by Laws 1890-91, 159; re-enacted Laws 1899, 106. The act which forms the basis of this title is found in Laws 1893, 97; re-enacted Laws 1899, 192. In *City of Wardner v. Pelkes*, 8 Ida. 333; 69 Pac. 64, the Supreme Court held that the act of 1893 repealed "all prior acts upon the subject," but in the later case of *Jack v. Village of Grangeville*, 9 Ida. 291; 74 Pac. 969, the court decided, without referring to the *Wardner* case, that Rev. St. Sec. 2230, Subd. 12, was not repealed by the 1893 law, and was still in force. Giving effect, so far as possible, to both these decisions, the commissioner has omitted from this title, the legislation prior to the act of 1893, with the exception of Subd. 12 of Sec. 2230, which is appended to Sec. 2238.

CHAPTER 1.

ORGANIZATION OF CITIES.

Section

2170. City of the second class defined.
2171. Division into wards.
2172. Annexation of adjacent territory.
2173. Annexation ordinance to be filed: Survey.
2174. Effect of annexation.
2175. Organization of village into city.

Section

2176. Division into wards.
2177. Conduct of first election.
2178. When village becomes a city.
2179. Delivery of books and papers.
2180. Existing rights and obligations not affected.
2181. Proof of corporate existence.
2182. Powers of cities.

City of the Second Class Defined.

Sec. 2170. All cities, towns and villages containing more than one thousand and less than fifteen thousand inhabitants shall be cities of the second class, and be governed by the provisions of this chapter, unless they shall adopt a village government as hereinafter provided.

Historical: Laws 1899, 192, Sec. 1; re-enacting Laws 1893, 97, Sec. 1.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8600.

Cited: In re Francis (1900) 7 Ida. 98; 60 Pac. 561.

Definition: The words, "City, Town

or Village," and, "City or Town," are used indiscriminately and without any purpose to distinguish between the words "town" and "village". *Brown v. Village of Grangeville* (1902) 8 Ida. 784; 71 Pac. 151.

General Repeal: This act provides

a complete scheme for the incorporation and government of cities, and repeals all prior acts on the subject. *City of Wardner v. Pelkes* (1902) 8 Ida. 333; 69 Pac. 64.

No Involuntary Corporations: Since, under Section 40 of the act of which this section is a part, the inhabitants

of any territory must make application therefor in order to become a city of the second class, this section does not create involuntary municipal corporations. *Carson v. City of Genesee* (1903) 9 Ida. 244; 74 Pac. 862.

Division Into Wards.

Sec. 2171. Each city of the second class shall be divided into not less than two nor more than six wards, as may be provided by ordinance of the city council thereof, and each ward shall contain, as nearly as practicable, an equal number of legal voters and an area as equal to each other as practicable.

Historical: Laws 1899, 192, Sec. 2; re-enacting Laws 1893, 97, Sec. 2.

Comparative Legislation: See Neb. Cobbeys An. Stat. Vol. 2, Sec. 8601.

Annexation of Adjacent Territory.

Sec. 2172. Whenever any land lying contiguous or adjacent to any city, town, or village in the State of Idaho, or to any addition or extension thereof, shall be, or shall have been, by the owner or proprietor thereof, or by any person by or with the owner's authority or acquiescence, laid off into lots or blocks, containing not more than five acres of land each, whether the same shall have been, or shall be, laid off, sub-divided or platted in accordance with any statute of this State or otherwise, or whenever the owner or proprietor, or any person by or with his authority, has sold, or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five acres, it shall be competent for the council or board of trustees, as the case may be, by ordinance, to declare the same, by proper legal description thereof, a part of such city, town or village.

Historical: Laws 1905, 391, Sec. 1. "The owner's" inserted for "his be-

fore "authority" in line 4, to more clearly express the meaning.

Annexation Ordinance to Be Filed: Survey.

Sec. 2173. It shall be the duty of the clerk of any city, town or village, upon the taking effect of such ordinance, to file with the county recorder of the county in which said city, town or village is located, a copy of the said ordinance duly certified as to the correctness thereof, under the corporate seal of such city, town or village; and to order the same surveyed, if the council or board of trustees shall so direct, the cost of said survey to be pro rated according to the amount of land surveyed, and assessed to the then owners of said lands, and the assessments handled the same as a regular tax; and thereupon and thereafter the corporate limits of such city, town or village shall extend to and include such land, and thereafter all property and persons within the limits of such annexed tract of land shall be subject to the provisions of all by-laws and ordinances of the said city, town or village, and to the police regulations thereunder.

Historical: Laws 1905, 391, Sec. 2; amended Laws 1907, 309, Sec. 1.

Effect of Annexation.

Sec. 2174. From the date of the filing of the certified copy of said

ordinance with the county recorder as provided for in the preceding section, all the property situated within the said annexed territory, and the inhabitants thereof, shall be subject to taxation, as other property and persons within the corporate limits of such city, town or village, and all road taxes and licenses collected therein thereafter shall be distributed in accordance with law, as though said annexed portion had been a part of the said city, town or village from the date of its incorporation.

Historical: Laws 1905, 391, Sec. 3.

Organization of Village Into City.

Sec. 2175. Whenever any village containing more than one thousand inhabitants desires to discontinue its organization as a village and organize as a city of the second class, and a number of the qualified electors of said village equal to three-fifths of the total vote as shown by the last preceding general village election held in said village, shall petition the board of trustees of such village therefor, upon the filing of said petition with the village clerk of said village, it shall be the duty of the board of village trustees to forthwith pass and publish a resolution, in the manner provided for the passage and publication of village ordinances, declaring such municipal corporation to be a city of the second class and changing the corporate name of such municipality from the village of (inserting the corporate name of the village) to the city of (inserting the corporate name of such city). In the event no general village election has ever been held in said village, then, for the purpose of this and the following sections, the village trustees may, on their own investigation, determine whether the voters signing said petition equal in number three-fifths of the total vote of the village, or such fact may be established by the affidavits of competent persons. Such resolution shall also find the existence of the above jurisdictional facts. Upon the passage, approval and publication of such resolution, it shall be the duty of the clerk of such village to record the same in the general ordinance or record book of such village, in the manner provided for the recording of ordinances, and to forthwith make out a true copy of the same, duly certified by him, and deliver the same to the clerk of the board of county commissioners of the county in which said municipality may be situated, and such board of county commissioners, at their next ensuing general or special meeting, shall cause the resolution to be entered and recorded therein, the same as the original order of incorporation of such municipality as a village was recorded.

Historical: Laws 1903, 216, Sec. 1; amended Laws 1907, 217, Sec. 1. "General" inserted for "equal" village election, line 14, to express the meaning.

Number of Signers: The provisions of this section which require the petition to be signed by a number of qualified electors equal to three-fifths of the vote "as shown by the latest preceding general village election," is directory merely; the material and

essential requirement is that three-fifths of the electors shall petition for the change, and it is immaterial whether an election has or has not been previously held in the village. In case no election has been held, the number of qualified electors required to sign the petition is a fact to be determined by the usual modes of proof. *Boyd v. Bickel* (1907) 13 Ida. —; 89 Pac. 631.

Division Into Wards.

Sec. 2176. Upon the passage of the resolution mentioned in the preceding section, it shall be the duty of the board of trustees of such village to enact an ordinance dividing such municipality into wards in the manner required by the city councils in cities of the second class.

Historical: Laws 1903, 216, Sec. 2.

Conduct of First Election.

Sec. 2177. The next biennial or general election, succeeding the passage of said resolution, held within such municipality, shall be conducted in the manner required for the conducting of elections in cities of the second class. The officers elected at such election shall be the same as in cities of the second class organized under the general laws of this State, and the board of trustees shall have full power to prescribe by ordinance such rules and regulations, not in conflict with the general laws of the State, for the conduct of such election as may be necessary for the carrying into effect of the provisions of this chapter. In all matters pertaining to such election the officers of such village shall have the same powers, except as herein otherwise provided, as are conferred upon the officers of cities of the second class in the performance of like duties. For the purposes of such election, such municipality shall be considered as a city of the second class, and such election may be conducted in its corporate name of the "city of (naming it)."

Historical: Laws 1903, 216, Sec. 3.
"Biennial" inserted for "annual" in
the first line, as municipal elections

now occur biennially. See Laws 1905,
385, Sec. 1 (Code Sec. 2245).

When Village Becomes a City.

Sec. 2178. Upon the election and qualification of the officers provided for by the general laws applicable to cities of the second class and by this chapter, at such election, such municipality shall cease to be a village and shall become and be a city of the second class, and thenceforth shall be known as the "City of, " and shall thereafter have the same powers and duties, and be subject to the same liabilities, as though originally incorporated as a city of the second class under the general laws of the State.

Historical: Laws 1903, 216, Sec. 4.

Delivery of Books and Papers.

Sec. 2179. Upon the qualification of the city officers elected as herein provided, all books, papers, records, money and property of such village, shall be delivered over to the proper officers of such city, and the authority of the board of trustees and of all village officers shall cease from and after the taking effect of the city government in such former village.

Historical: Laws 1903, 216, Sec. 5.

Existing Rights and Obligations Not Affected.

Sec. 2180. Any city organized under the provisions of this and the five preceding sections shall, for all purposes, be deemed and taken to be in law the identical corporation theretofore incorporated and

existing; and such reorganization shall in no wise affect or impair the title to any property owned or held by such corporation or in trust therefor, or any debts, demands, liabilities or obligations existing in favor of or against such corporation, or any proceeding then pending, nor shall the same operate to repeal or affect in any manner any ordinance theretofore passed or adopted and remaining unrepealed, or to discharge any persons from any liability, civil or criminal then existing, for any violations of any such ordinance; but such ordinances, so far as the same are not in conflict with the general laws, shall be and remain in force until repealed or amended by the said city council: *Provided*, That proceedings theretofore commenced shall, after such reorganization, be conducted in the same manner as though the change herein provided for had not taken place.

Historical: Laws 1903, 216, Sec. 6.

Proof of Corporate Existence.

Sec. 2181. All courts holden within the county in which such city is situated shall take judicial notice of the corporate capacity and existence of such city, and of the fact that such city is identical with, and a continuation of, such municipality formerly organized as a village. In all other courts of the State the corporate capacity and existence of such city may be proven by copies of the resolution discontinuing the village government of such municipality, and declaring the same to be a city, and of the original order of incorporation of said municipality as a village, duly authenticated and certified by the clerk of the board of county commissioners, in whose office such records exist, to be correct copies of such proceedings as the same appear of record in his office.

Historical: Laws 1903, 216, Sec. 7.

Powers of Cities.

Sec. 2182. Cities of the second class in their corporate capacities are authorized and empowered to enact ordinances for the following purposes, in addition to other powers granted by this title:

1. To restrain, prohibit and suppress billiard tables and bowling alleys kept for public use, houses of prostitution, and unlicensed tippling shops, and other disorderly houses and practices, gambling and gambling houses, and all kinds of public indecencies.

2. To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and enforce the same within five miles of the city.

3. To erect, establish and regulate hospitals, and to provide for the government and support of the same.

4. To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water.

5. To establish night watch and police, and define the powers and duties of the same.

6. To provide for and regulate the lighting of the streets, public buildings and grounds, and the erection of lamp posts, and to levy and collect a special tax therefor, upon all the taxable property within the city limits.

7. To purchase and own grounds for, and to erect and establish market houses and market places.

8. To provide for the erection and government of any useful or necessary buildings for the use of the city.

9. To procure fire engines, hooks, ladders, buckets and other apparatus, and to organize fire engine, hook and ladder and bucket companies and to prescribe rules of duty, and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriation therefor.

10. To elect one of the council who shall be styled the "president of the council," and who shall preside at all meetings of the council in the absence of the mayor; and, in the absence of the president, to elect one of their own body to occupy his place temporarily, who shall be styled "acting president of the council," and the president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the council; and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

Historical: Laws 1899, 192, Sec. 39; re-enacting Laws 1893, 97, Sec. 39. "The council" inserted for "your body" in Subd. 10 to conform to the construction of the remainder of the section.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Secs. 8638

to 8646 inclusive; also Secs. 8666, 8667.

Cross Reference: Have the powers conferred on county commissioners with respect to roads within the city: Sec. 893. Powers of cities and villages: Secs. 2236-2244.

CHAPTER 2.

THE COUNCIL AND OFFICERS OF CITIES.

Section

- 2183. Constitution of council.
- 2184. Election and qualifications of councilmen.
- 2185. Meetings of council.
- 2186. Officers elective and appointive.
- 2187. Salaries of officers.
- 2188. Salary and fees of police judge.
- 2189. Qualifications of officers.
- 2190. Duties of mayor.
- 2191. Veto power.
- 2192. Messages to council.

Section

- 2193. Special meetings of council.
- 2194. Accounts and reports of officers.
- 2195. Police powers of mayor.
- 2196. Vacancy in office of mayor.
- 2197. Mayor may require aid in enforcing law.
- 2198. Remission of fines.
- 2199. Overseers of streets: Powers and duties.
- 2200. Powers of policemen.
- 2201. Duties of city engineer.

Constitution of Council.

Sec. 2183. The council of each city of the second class shall consist of not less than four nor more than twelve citizens of said city, who shall be qualified electors and taxpayers under the Constitution and laws of the State of Idaho.

Historical: Laws 1899, 192, Sec. 3; re-enacting Laws 1893, 97, Sec. 3.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8602.

Election and Qualifications of Councilmen.

Sec. 2184. Each ward of said city shall have at least two councilmen, who shall be chosen from the qualified electors of their respective

wards, and who shall serve for two years and until their successors shall be elected and qualified. No person shall be eligible to the office of councilman who is not at the time of his election an actual resident of the ward for which he is elected, and a qualified elector under the Constitution and laws of the State of Idaho, and if any councilman shall remove from the ward for which he is elected his office as a councilman shall thereby become vacant. Whenever there shall be a tie in the election of councilmen, it shall be determined by lot by the judges of election of the ward in which it shall happen.

Historical: Laws 1899, 192, Sec. 4;
re-enacting Laws 1893, 97, Sec. 4;
amended Laws 1905, 385, Sec. 1.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8603.

Meetings of Council.

Sec. 2185. Regular meetings of the city council shall be held at such times as the council may provide by ordinance.

Historical: Laws 1899, 192, Sec. 5;
re-enacting Laws 1893, 97, Sec. 5.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8604.

Officers Elective and Appointive.

Sec. 2186. At the time of the biennial city election hereinafter provided for, there shall be elected a mayor, a clerk, a treasurer, a city engineer, a police judge and the councilmen hereinbefore provided for. The mayor, with the consent of the council, may appoint a city attorney and an overseer of streets, who shall hold their offices for two years unless sooner removed by the mayor with the consent of the council. The mayor, by and with the consent of the council, shall appoint such a number of regular policemen as may be necessary, and may also appoint special policemen from time to time as exigencies arise. The police officers appointed by the mayor and council in accordance herewith shall be removable at any time by the mayor: *Provided*, The council may provide by ordinance that the city clerk shall be ex-officio police judge.

Historical: Laws 1899, 192, Sec. 6;
re-enacting Laws 1893, 97, Sec. 6;
amended Laws 1905, 385, Sec. 1;
amended Laws 1907, 307, Sec. 1.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8605.

Cross Reference: Mayor and council to fill vacancies in office: Sec. 321.

Salaries of Officers.

Sec. 2187. The salaries of all officers of the city shall be fixed by ordinance.

Historical: Laws 1899, 192, Sec. 7;
re-enacting Laws 1893, 97, Sec. 7.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8606.

Salary and Fees of Police Judge.

Sec. 2188. The police judge shall receive for all services rendered by him as such a salary to be fixed by the city council, not exceeding the sum of one thousand dollars per annum, payable monthly. He shall be entitled to and shall collect the same fees as justices of the peace are entitled to for similar services, and shall pay the same into the city treasury on the last day of each and every month.

Historical: Laws 1899, 192, Sec. 8;
re-enacting Laws 1893, 97, Sec. 8;

amended Laws 1903, 187, Sec. 1;
amended Laws 1905, 375, Sec. 1.

Qualifications of Officers.

Sec. 2189. All officers shall be qualified electors and taxpayers, and shall have resided within the limits of the city for three months next preceding their election.

Historical: Laws 1899, 192, Sec. 9; re-enacting Laws 1893, 97, Sec. 9; amended Laws 1905, 351, Sec. 1.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8608.

Duties of Mayor.

Sec. 2190. The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and of this title are complied with.

Historical: Laws 1899, 192, Sec. 10; re-enacting Laws 1893, 97, Sec. 10.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8609.

Veto Power.

Sec. 2191. The mayor shall have power to veto or sign any ordinance passed by the city council: *Provided*, That any ordinance vetoed by the mayor may be passed over his veto by a vote of two-thirds of the members of the council elected, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become a law without his signature.

Historical: Laws 1899, 192, Sec. 11; re-enacting Laws 1893, 97, Sec. 11.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8610.

Messages to Council.

Sec. 2192. He shall, from time to time, communicate to the city council such information, and recommend such measures, as, in his opinion, may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city.

Historical: Laws 1899, 192, Sec. 12; re-enacting Laws 1893, 97, Sec. 12.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8611.

Special Meetings of Council.

Sec. 2193. The mayor or any three councilmen, shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing, and the call, and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

Historical: Laws 1899, 192, Sec. 13; re-enacting Laws 1893, 97, Sec. 13.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8612.

Special Meetings: Where there is a special meeting of the city council and the mayor and all the council-

ment except one are present, any business may be transacted that does not incur an indebtedness, although the call for the meeting was not made in writing as required by this section. *Sommercamp v. Kelly* (1902) 8 Ida. 712; 71 Pac. 147.

Accounts and Reports of Officers.

Sec. 2194. The mayor shall have the power, when he deems it

necessary, to require any officer of the city to exhibit his accounts or other papers, and to make reports to the council in writing, touching any subject or matter he may require pertaining to his office.

Historical: Laws 1899, 192, Sec. 14;
re-enacting Laws 1893, 97, Sec. 14.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8613.

Police Powers of Mayor.

Sec. 2195. The mayor shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation, within one-half mile of the corporate limits of said city.

Historical: Laws 1899, 192, Sec. 15;
re-enacting Laws 1893, 97, Sec. 15.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8614.

Vacancy in Office of Mayor.

Sec. 2196. In case of any vacancy in the office of mayor, or in case of his absence or disability, the president of the council for the time being, shall exercise the office of mayor until such vacancy be filled, or such disability removed; or in case of temporary absence, until the mayor shall return.

Historical: Laws 1899, 192, Sec. 16;
re-enacting Laws 1893, 97, Sec. 16.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8615.

Mayor May Require Aid in Enforcing Law.

Sec. 2197. The Mayor is hereby authorized to call on every male inhabitant in the city over eighteen years of age and under the age of fifty years, to aid in enforcing the laws.

Historical: Laws 1899, 192, Sec. 17;
re-enacting Laws 1893, 97, Sec. 17.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8616.

Remission of Fines.

Sec. 2198. The mayor shall have power to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

Historical: Laws 1899, 192, Sec. 18;
re-enacting Laws 1893, 97, Sec. 18.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8617.

Overseer of Streets: Powers and Duties.

Sec. 2199. The overseer of the streets shall, subject to the orders of the mayor and council, have general charge, direction and control of all work on the streets, sidewalks, culverts and bridges of the city, and shall perform such other duties as the council may require.

Historical: Laws 1899, 192, Sec. 21;
re-enacting Laws 1893, 97, Sec. 21.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8620.

Powers of Policemen.

Sec. 2200. The policemen of the city shall have power to arrest all offenders against the law of the State, or of the city, by day or by night, in the same manner as the sheriff or constable, and keep them in the city prison or other place to prevent their escape, until trial can be had before the proper officer.

Historical: Laws 1899, 192, Sec. 19;
re-enacting Laws 1893, 97, Sec. 19.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8618.

Duties of City Engineer.

Sec. 2201. The city engineer shall make estimates of the cost of all labor and materials which may be done or furnished by contract with the city, and make all surveys, estimates and calculations necessary to be made for the establishment of grades, building of culverts, sewers, bridges, curbing and gutters, and the improvement of streets and the erection and repair of buildings, and shall perform such other duties as the council may require. Before the city council shall make any contract for building bridges or sidewalks, or for any work on the streets, or for any other work or improvement, an estimate of the cost thereof shall be made by the city engineer and submitted to the council, and no contract shall be entered into for any work or improvement for a price exceeding such estimate; and in advertising for bids for any such work the council shall cause the amount of such estimate to be published therewith.

Historical: Laws 1899, 192, Sec. 20;
re-enacting Laws 1893, 97, Sec. 20.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8619.

CHAPTER 3. POLICE COURTS.

Section

- 2202. Jurisdiction of police judge.
- 2203. Issuance and service of warrant.
- 2204. Disposition of fines, etc.
- 2205. Hearing and determination.
- 2206. Continuance: Security to appear.
- 2207. Breach of recognizance: Offenses exceeding jurisdiction.
- 2208. Attendance and fees of witnesses.
- 2209. Trial by jury.
- 2210. Judgment and punishment.
- 2211. Labor of prisoners.

Section

- 2212. Discharge of defendant.
- 2213. Laws governing proceedings.
- 2214. Summoning witnesses on continuance.
- 2215. Court to be open every day.
- 2216. Appeals: How taken.
- 2217. Vacancy in office: How filled.
- 2218. Punishment for contempt.
- 2219. Recovery of fines by suit.
- 2220. Use of county jail.
- 2221. Limitation of actions and prosecutions.

Jurisdiction of Police Judge.

Sec. 2202. The police judge shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city, and jurisdiction concurrent with that which is or may be conferred upon justices of the peace, of misdemeanors under the laws of the State, arising within the limits of the city, and shall also have jurisdiction for the examination of offenders against the laws of the State, for offenses arising within the city limits.

Historical: Laws 1899, 192, Sec. 22;
re-enacting Laws 1893, 97, Sec. 22.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8621.

Issuance and Service of Warrant.

Sec. 2203. Whenever complaint shall be made to the police judge on oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police

judge has jurisdiction, the police judge shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the sheriff or constable of the county, or some person specially appointed in writing indorsed on the process by the police judge for that purpose, and whose return shall be made under oath.

Historical: Laws 1899, 192, Sec. 23;
re-enacting Laws 1893, 97, Sec. 23.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8622.

Disposition of Fines, Etc.

Sec. 2204. One-half of all moneys which are collected within the limits of any incorporated city, town or village organized or operating under the provisions of this title, for liquor licenses, or from fines or penalties under the ordinances of said city, town or village, must be paid into the city, town or village treasury for general revenue purposes, and one-half into the treasury of the school district or districts if more than one, equally embraced in whole or in part of the same territory as said city, town or village.

Historical: Laws 1899, 192, Sec. 24;
re-enacting Laws 1893, 192, Sec. 24;
amended Laws 1903, 432, Sec. 1.
"Title" inserted for "act as amended,
or the original act of which this act
is amendatory."

Payments to School District: The fact that a school district comprises a larger territory than that embraced

within the city or village, is no excuse or reason for a failure of the city or village authorities to pay one-half of the moneys collected from fines, penalties and licenses to the trustees of the school district. School Dist. No. 27 v. Village of Twin Falls (1907) 13 Ida. —; 90 Pac. 735.

Hearing and Determination.

Sec. 2205. When any person shall be brought before the police judge upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

Historical: Laws 1899, 192, Sec. 25;
re-enacting Laws 1893, 97, Sec. 25.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8624.

Continuance: Security to Appear.

Sec. 2206. Upon good cause shown, the police judge may postpone the trial of the case to a certain day, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before the said judge at the time and place appointed, then and there to answer the complaint alleged against him.

Historical: Laws 1899, 192, Sec. 26;
re-enacting Laws 1893, 97, Sec. 26.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8625.

Breach of Recognizance: Offenses Exceeding Jurisdiction.

Sec. 2207. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified to the District Court of the proper county to be proceeded upon according to law. If in the progress of any trial before said judge it shall appear that the accused ought to be put upon his trial for an offense not cognizable before said judge, he shall immediately stop all further proceedings before him and proceed as in other cases cognizable before the District Court.

Historical: Laws 1899, 192, Sec. 27;
re-enacting Laws 1893, 97, Sec. 27.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8626.

Attendance and Fees of Witnesses.

Sec. 2208. It shall be the duty of said judge to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary, and all witnesses shall receive the sum of fifty cents for each day's attendance.

Historical: Laws 1899, 192, Sec. 28;
re-enacting Laws 1893, 97, Sec. 28.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8627.

Trial by Jury.

Sec. 2209. Cases in the police court arising under the ordinances of the city shall be tried and determined by the police judge without the intervention of a jury, unless the defendant demand a trial by jury, and when a demand shall be so made the trial shall be by a jury of six competent men, and shall be conducted in the same manner as trials before justices of the peace for misdemeanors arising under the general laws of the State.

Historical: Laws 1899, 192, Sec. 29;
re-enacting Laws 1893, 97, Sec. 29.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8628.

Judgment and Punishment.

Sec. 2210. If the defendant is found guilty, the said judge shall declare and assess the punishment and render judgment accordingly; it shall be part of the judgment that the defendant stand committed, until the judgment is complied with.

Historical: Laws 1899, 192, Sec. 30;
re-enacting Laws 1893, 97, Sec. 30.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8629.

Labor of Prisoners.

Sec. 2211. Whenever the defendant is sentenced to imprisonment for the violation of a city ordinance, he shall be put to work for the benefit of the city, under direction of the mayor, for the term of his imprisonment; and when committed for the non-payment of a fine or costs, for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs one dollar and fifty cents per day for each day he shall work.

Historical: Laws 1899, 192, Sec. 31;
re-enacting Laws 1893, 97, Sec. 31.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8630.

Discharge of Defendant.

Sec. 2212. Any defendant committed under the provisions of this chapter for a misdemeanor arising under the laws of this State may be discharged in the same manner as if he had been committed by the District Court.

Historical: Laws 1899, 192, Sec. 32;
re-enacting Laws 1893, 97, Sec. 32.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8631.

Laws Governing Proceedings.

Sec. 2213. In all cases not herein especially provided for, the process, proceedings and trial before the judge shall be governed by laws regulating proceedings in justices' courts in criminal cases.

Historical: Laws 1899, 192, Sec. 33;
re-enacting Laws 1893, 97, Sec. 33.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8632.

Cross Reference: Criminal proceedings in justices' courts: Secs. 8280-8314.

Summoning of Witnesses on Continuance.

Sec. 2214. When a trial shall be continued by a judge, it shall not be necessary to summon any witnesses who may be present at the continuance, but the judge shall verbally notify such witnesses as either party may require, to attend before him to testify before him in the case on the day set for trial, which verbal notice shall be as valid as a summons.

Historical: Laws 1899, 192, Sec. 34;
re-enacting Laws 1893, 97, Sec. 34.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8633.

Court to Be Open Every Day.

Sec. 2215. The police judge shall be a conservator of the peace, and his court shall be open every day except Sunday to hear, try and determine all cases cognizable before him, and he shall have power to bring parties forthwith to trial.

Historical: Laws 1899, 192, Sec. 35;
re-enacting Laws 1893, 97, Sec. 35.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8634.

Appeals: How Taken.

Sec. 2216. Appeals may be taken from the judgments of the police judge, in the same manner as appeals are taken from the judgments of justices of the peace in criminal cases.

Historical: Laws 1899, 192, Sec. 36;
re-enacting Laws 1893, 97, Sec. 36.

Cross Reference: Appeals from justices' judgments: Secs. 8320-8327.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8635.

Vacancy in Office: How Filled.

Sec. 2217. In case of vacancy in the office of police judge by death, resignation or otherwise, or in the case of the absence, interest or disability of such judge to perform his duty, it shall be the duty of an acting justice of the peace of the precinct in which such city is situated, and he may be designated by the mayor, to act as judge, during such vacancy, absence or disability in the trial of causes cognizable before said judge.

Historical: Laws 1899, 192, Sec. 37;
re-enacting Laws 1893, 97, Sec. 37.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8636.

Punishment for Contempt.

Sec. 2218. The police judge shall have the power to enforce due obedience to all orders, rules, judgments and decrees made by him, and may fine or imprison for contempt offered to such judge whilst holding his court, or to process issued by him, in the same manner, and to the same extent, as the District Courts.

Historical: Laws 1899, 192, Sec. 38;
re-enacting Laws 1893, 97, Sec. 38.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8637.

Recovery of Fines by Suit.

Sec. 2219. Fines may in all cases, and in addition to any other mode provided, be recovered by suit or action before a justice of the peace or other court of competent jurisdiction, in the name of the State, and in any such suit or action where pleadings are necessary, it shall be sufficient to declare generally for the amount claimed

to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be the facts of the alleged violation.

Historical: Laws 1899, 192, Sec. 76;
re-enacting Laws 1893, 97, Sec. 72.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8751.

Use of County Jail.

Sec. 2220. Any city or village shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordinances of such city or village, but it shall be liable to the county for the cost of keeping such prisoners.

Historical: Laws 1899, 192, Sec. 77;
re-enacting Laws 1893, 97, Sec. 73.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8752.

Limitation of Actions and Prosecutions.

Sec. 2221. All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered or the prosecution is commenced.

Historical: Laws 1899, 192, Sec. 78;
re-enacting Laws 1893, 97, Sec. 74.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8753.

CHAPTER 4.
ORGANIZATION OF VILLAGES.

Section	Section
2222. Incorporation of villages.	2230. Compensation of officers.
2223. Board of trustees.	2231. Publication of by-laws: Election of chairman pro tem.
2224. Qualifications of trustees.	2232. Village clerk as ex-officio police judge.
2225. Oath of office: Chairman: Meetings.	2233. Manner of adopting village government.
2226. Quorum: Adjournment: Attendance of members.	2234. When trustees assume office.
2227. Journal of proceedings	2235. City ordinances to remain effective: City indebtedness.
2228. Powers of trustees.	
2229. Appointment of officers: Powers of police.	

Incorporation of Villages.

Sec. 2222. Any town or village containing not less than two hundred nor more than one thousand inhabitants, now incorporated as a city, town or village, under the laws of this State, or that shall hereafter become organized pursuant to the provisions of this title, and any city of the second class which shall have adopted village government as provided by law, shall be a village, and shall have the rights, powers and immunities hereinafter granted, and none other, and shall be governed by the provisions of this chapter: *Provided*, That cities of the second class heretofore incorporated, and containing not more than fifteen hundred inhabitants, shall continue to be and exercise the powers of cities of the second class, and the officers thereof shall continue to exercise the powers conferred herein upon officers of such cities, until the first general election held therein, and the qualification of village officers elected at said election:

Provided, further, That whenever a majority of the taxable inhabitants of any town or village, not heretofore incorporated under any law of this State, shall present a petition to the county board of the county in which said petitioners reside, praying that they may be incorporated as a village, designating the name they wish to assume and the metes and bounds of the proposed village; and if such county board, or a majority of the members thereof, shall be satisfied that a majority of the taxable inhabitants of the proposed village have signed such petition, and that inhabitants to the number of two hundred or more are actual residents of the territory described in the petition, the said board shall declare the said proposed village incorporated, entering the order of incorporation upon their records, and designating the metes and bounds thereof; and thereafter the said village shall be governed by the provisions of this title applicable to the government of villages. And the said county board shall, at the time of the incorporation of said village, appoint five persons having the qualifications provided in Section 2224, as trustees, who shall hold their offices and perform all the duties required of them by law, until the election and qualification of their successors at the time and in the manner provided in this title.

Historical: Laws 1899, 192, Sec. 40; re-enacting Laws 1893, 97, Sec. 40.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8680.

Cited: Carson v. City of Genesee (1903) 9 Ida. 244; 74 Pac. 862.

Incorporation Authorized: This section authorizes the incorporation of towns containing more than one thousand inhabitants. City of Wardner v. Pelkes (1902) 8 Ida. 333; 69 Pac. 64.

Petition: An attempted incorporation of a town is void where the petition for incorporation fails to describe the metes and bounds of any tract of land whatever. *Ib.*

Order: The fact that the order of the board of commissioners declaring a town incorporated, fails to designate the metes and bounds of the town, does not affect the legality of the incorporation, where the petition for incorporation clearly designates said boundaries, and the order refers to the petition and grants it without change or modification. State v. Inhabitants of Pocatello (1891) 3 Ida. 174; 28 Pac. 411.

The fact that the order incorporating a city does not state that two hundred or more inhabitants are "legal residents" of the territory described in the petition, does not render the order void where the same uses the words "taxable inhabitants," and shows that a sufficient number of taxable inhabitants signed the petition. City of Wardner v. Pelkes (1902) 8 Ida. 333; 69 Pac. 64.

Validity in General: Where a petition for the incorporation of a city is signed by a majority of the taxable male inhabitants, and designates the name of the proposed city, and also

the metes and bounds of legal subdivisions according to the United States survey, and the order of incorporation recites the presentation of the petition signed by the taxable inhabitants of the city, finds that the prayer of the petition is reasonable, designates the metes and bounds in accordance with the petition and directs that thenceforth the inhabitants within the described boundaries shall be a body politic under the name and style of the said city, this section is substantially complied with, although the petition and order refer to the proceedings as brought under Sec. 2224 of the Revised Statutes instead of under this section. *Ib.*

Collateral Attack: In an action attacking the validity of the incorporation of a village on the ground that the petition praying for such incorporation was not signed by a majority of the taxable male inhabitants residing within the boundaries of said village, it must affirmatively appear from the proceedings attacking such incorporation that said petition was not signed by a majority of such taxpayers. In re Francis (1900) 7 Ida. 98; 60 Pac. 561.

Where the board of commissioners in making an order incorporating a city, finds that the proposed boundaries are reasonable, any person who is aggrieved thereby has his remedy by appeal, and the incorporation will not be held void because the boundaries are improperly fixed, in the absence of any showing that the boundaries so fixed include an unreasonable amount of land. City of Wardner v. Pelkes (1902) 8 Ida. 333; 69 Pac. 64.

Board of Trustees.

Sec. 2223. The corporate powers and duties of every village shall be vested in a board of trustees, to consist of five members.

Historical: Laws 1899, 192, Sec. 41;
re-enacting Laws 1893, 97, Sec. 41.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8681.

Qualifications of Trustees.

Sec. 2224. Any person may be a trustee who shall be a qualified elector of this State and who shall have been an inhabitant and taxpayer of the village at the time of his election, and shall have resided therein for three months next preceding his election, and every trustee so elected shall hold his office for the term of two years, and until his successor is elected and qualified.

Historical: Laws 1899, 192, Sec. 42;
re-enacting Laws 1893, 97, Sec. 42;
amended Laws 1905, 351, Sec. 1.
"Two years" inserted for "one year"
as the term of the trustee's office to

conform to Laws 1905, 385, Sec. 1
(Code, Sec. 2245).

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8612.

Oath of Office: Chairman: Meetings.

Sec. 2225. Every trustee before entering upon the duties of his office, shall take an oath to support the Constitution of the United States and the Constitution of the State of Idaho, and faithfully and impartially to discharge the duties of his office; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman from their number. The board of trustees shall by ordinance fix the time and place of holding their stated meetings and may be convened at any time by the chairman.

Historical: Laws 1899, 192, Sec. 43;
re-enacting Laws 1893, 97, Sec. 43.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8683.

Quorum: Adjournments: Attendance of Members.

Sec. 2226. At all meetings of the board a majority of the trustees shall constitute a quorum to do business; a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board of trustees by ordinance may have previously prescribed.

Historical: Laws 1899, 192, Sec. 44;
re-enacting Laws 1893, 97, Sec. 44.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8684.

Journal of Proceedings.

Sec. 2227. The board of trustees shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on the journal, on any question or ordinance, and the proceedings shall be public.

Historical: Laws 1899, 192, Sec. 45;
re-enacting Laws 1893, 97, Sec. 45.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8685.

Powers of Trustees.

Sec. 2228. Such board of trustees shall have power to pass by-laws and ordinances to prevent and remove nuisances, to prevent, restrain and suppress bawdy houses, gambling houses and other disorderly houses, within the limits of such village, to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other

amusements within such village; to establish night watches; to provide pest houses; to prevent the introduction and spread of contagious diseases; to establish and regulate markets; to erect and repair bridges; to erect, repair and regulate wharves, and the rates of wharfage; to regulate the landing of steamboats, rafts and other water crafts; to provide for the inspection of lumber, building materials, and provisions, to be used or offered for sale in such village, or to be exported therefrom; to require and regulate the planting and protection of shade trees in the streets, and the building of stairways, railways, doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and other excavations through and under, the sidewalks of such village; and in addition to the special powers herein conferred and granted, maintaining the peace, good government and welfare of the town or village, and its trade, commerce and manufactures, and to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment until the amount of said judgment and costs shall be paid.

Historical: Laws 1899, 192, Sec. 46;
re-enacting Laws 1893, 97, Sec. 46.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8686.

Cross Reference: Trustees have the powers conferred on county commissioners with respect to roads within the village: Sec. 893.

Appointment of Officers: Powers of Police.

Sec. 2229. Such board of trustees shall appoint a clerk, treasurer and attorney. They may also appoint such night watch and police as may be necessary, who shall have power to arrest all offenders against the law of the State, or of the village, by day or by night, in the same manner as the sheriff or constable, and to keep them in the village prison or other place, to prevent their escape, until trial can be had before the proper officer.

Historical: Laws 1899, 192, Sec. 47;
re-enacted Laws 1893, 97, Sec. 47;
amended Laws 1901, 133, Sec. 1.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8687.

Cross Reference: Trustees to fill vacancies in office: Sec. 321.

Compensation of Officers.

Sec. 2230. The trustees shall receive no compensation. The compensation of the other officers shall be fixed by ordinance.

Historical: Laws 1899, 192, Sec. 48;
re-enacting Laws 1893, 97, Sec. 48.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8688.

Publication of By-Laws: Election of Chairman Pro Tem.

Sec. 2231. The chairman of such board of trustees shall cause to be printed and published the by-laws and ordinances of the board, for the information of the inhabitants, and cause the same to be carried into effect, and in case of the absence of the chairman of the board from any meeting of the board of trustees, such board shall have power to appoint a chairman, pro tempore, who shall, for the time being, exercise and have the powers, and perform the same duty, as the regular chairman.

Historical: Laws 1899, 192, Sec. 49;
re-enacting Laws 1893, 97, Sec. 49.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8689.

Village Clerk as Ex-Officio Police Judge.

Sec. 2232. The village clerk of any village incorporated under the provisions of this chapter may, provided that no justice of the peace resides within the limits of such village, be ex-officio police judge, and shall have concurrent jurisdiction with the justices of the peace of the precinct in which said village may be situated, and shall have jurisdiction to hear, try and determine all offenses against the general ordinances of the said village, and may for that purpose issue warrants of arrest for any alleged offender, upon information under oath as in other cases; and upon the arrest of any alleged offender by the sheriff of the county, the constable of the precinct or the marshal of such village, he shall proceed thereon in all respects in the same manner and with the same powers as against persons charged with misdemeanor under the general laws of the State, and such justice of the peace, or police magistrate, before whom such proceedings shall be had, and the officer making the arrest, shall be entitled to the same fees, to be collected in the same manner as in cases of misdemeanor: *Provided, however,* That in all proceedings under the general ordinances of any village, all such bills incurred shall be audited by the board of trustees, and paid out of the village treasury, in the same manner as other bills contracted by or on behalf of such village are paid.

Historical: Laws 1899, 192, Sec. 52;
re-enacting Laws 1893, 97, Sec. 52;
amended Laws 1905, 35, Sec. 1.

Manner of Adopting Village Government.

Sec. 2233. Whenever any city of the second class, containing more than fifteen hundred inhabitants, desires to discontinue its organization as a city and organize as a village, and one-fourth of the legal voters of such city shall petition the city council, the council shall cause to be published for at least thirty days, a notice stating that the question of adopting village government will be submitted at the next biennial city election. The form of the ballot shall be, "For organization as a village" and "Against organization as a village"; and at the same election the qualified voters shall also vote for five trustees for the village. If a majority of the votes cast are "For organization as a village," then such city shall, within sixty days after such election, be and become a village, and be governed under the provisions of the law relating to villages, unless it shall at some future biennial city election adopt a city government, in the manner provided herein for its adoption of village government.

Historical: Laws 1899, 192, Sec. 53;
re-enacting Laws 1899, 97, Sec. 53.
"Biennial" for "annual" city election,
to conform to Laws 1905, 385, Sec. 1
(Sec. 2245 Post).

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8693.

When Trustees Assume Office.

Sec. 2234. If village government shall have been adopted as aforesaid, the board of trustees shall, at the expiration of sixty days from said election, enter upon the duties of their offices; and all books,

papers, records, money and property of such city shall be delivered over to the board of trustees, and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

Historical: Laws 1899, 192, Sec. 54;
re-enacting Laws 1893, 97, Sec. 54.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8694.

City Ordinances to Remain Effective: City Indebtedness.

Sec. 2235. All ordinances of the city shall remain and be in full force in the village, until amended or repealed by the board of trustees, and the board shall provide for the payment of the city indebtedness and levy necessary taxes thereof, as if the same had been incurred by the village.

Historical: Laws 1899, 192, Sec. 55;
re-enacting Laws 1893, 97, Sec. 55.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8695.

CHAPTER 5.
POWERS OF CITIES AND VILLAGES.

Section	Section
2236. General powers of municipalities.	2241. Drainage of stagnant water.
2237. Rights of pre-existing corporations preserved.	2242. Supervision of streets, bridges and squares.
2238. Additional powers of cities and villages.	2243. Disposition of discontinued streets.
2239. Suppression of prostitution.	2244. Regulation of huckstering.
2240. Highway labor and commutation fee.	

Note: General powers of cities of the second class: Sec. 2182.

General Powers of Municipalities.

Sec. 2236. Cities of the second class and villages governed by this title, shall be bodies corporate and politic, and may sue and be sued; contract or be contracted with; acquire, hold and convey property real or personal; have a common seal, which they may change and alter at pleasure; and such other powers as may be conferred by law: *Provided*, That real property shall only be conveyed by the proper authorities of such city or village when so authorized by a vote of the electors thereof.

Historical: Laws 1899, 192, Sec. 56;
re-enacting Laws 1893, 97, Sec. 56.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8696.

Rights of Pre-Existing Corporations Preserved.

Sec. 2237. All rights and privileges which have accrued to any city, town or village held by any officer of such corporation, under or by virtue of any act of the Legislature of the Territory or State of Idaho, or any act of the Congress of the United States, before the taking effect of this title, are hereby preserved to such cities, towns or villages, and all its said trusts, rights and privileges shall be transmitted to and be vested in such latter corporation, and all actions heretofore commenced by or against any city or town which shall be or become a city or village under the provisions of this title, shall be in no manner affected by this title, but all such actions shall

be continued to final judgment and satisfaction as if this title had not been passed.

Historical: Laws 1899, 192, Sec. 58;
re-enacting Laws 1893, 97, Sec. 58.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8698.

Additional Powers of Cities and Villages.

Sec. 2238. In addition to the powers hereinbefore granted to cities and villages under the provisions of this chapter, any city or village may, by ordinance or by-law:

First. Levy taxes for general revenue purposes not to exceed ten mills on the dollar, in any one year, on all the property within the limits of said city or village, taxable according to the laws of the State of Idaho, the valuation of such property to be ascertained from the books or assessment rolls of the tax collector of the proper county.

Second. Levy any other tax or special assessment authorized by law.

Third. Establish, lay out, alter, open any streets or alleys, and improve, repair, light, grade or sprinkle, drain the same and remove any and all obstructions therefrom, establish grades and construct bridges, cross-walks, culverts and sewers thereon, and repair and maintain the same; cause to be planted, set out and cultivated shade trees along the lines thereof or therein; and defray the expenses of the same out of the general fund of such city or village, not exceeding two mills of the levy for general purposes, or defray the expenses of the same by a special assessment in accordance with the provisions of the fifth subdivision of this section.

Fourth. Provide by general ordinance for the construction and repair of sidewalks and for the laying of temporary plank sidewalks upon the natural surface of the ground without regard to grades, upon streets not permanently improved, and provide for the assessment of the cost thereof on the property in front of which the same shall be constructed, repaired or laid.

Fifth. Curb, plank, pave, gravel, macadamize, gutter, grade or sprinkle any highway, street or alley therein, in whole or in part, and levy a special tax on the lots and parcels of land fronting on such highway, street or alley, to pay the expense thereof. But, unless a majority of the resident owners of the property subject to assessment for such improvement petition the council or trustees to make the same, such improvement shall not be made unless three-fourths of all the members of such council or trustees, shall, by an affirmative vote, at a regular meeting, assent to and order the same.

Sixth. Assessments made under the provisions of Subdivision Fifth of this section shall be made, assessed and collected in the following manner:

1. The assessment or cost of any work or improvement provided for in Subdivision Fifth of this section, shall be assessed upon the lots and land fronting thereon, each lot being separately assessed for the full debt thereof in proportion to the benefits to the property to be benefited, sufficient to cover the total expense of the work to the center of the street on which it fronts.

2. The expense of all improvements in the space formed by the junction of two or more streets, or wherein one main street terminates

in or crosses another main street, and also all street crossings or cross-walks, shall be paid by such city or village.

3. When any work or improvement mentioned in this section is done or made on one side of the center line of said alleys or public ways, the lots fronting on that side only shall be assessed to cover the expenses of said work, according to the provisions of this section.

4. The city council or trustees shall, before or during the grading, paving or other improvement of any street or alley, the cost of which is to be levied and assessed upon the property benefited, first pass, at a special meeting, a resolution or ordinance declaring its intention to make such improvement, and stating in such resolution or ordinance the name of the street or alley to be improved, the points between which said improvement is to be made, the general character of the proposed improvement and the estimate of the cost of the same, and that the cost of the same is to be assessed against the property abutting (and included in the assessment district herein provided) on such street proposed to be improved, and shall fix the time, not less than ten days, in which protests against said proposed improvement may be filed in the office of the city clerk. It shall be the duty of such clerk to cause such resolution to be published in the official newspaper of the city in at least two consecutive issues before the time fixed in such resolution for filing such protests and affidavit of such publication shall be filed on or before the time fixed for such filing. If protests against the proposed improvement by the owners of more than two-thirds of the front feet of lots and lands abutting on such proposed improvement and included in the assessment district therein provided, be filed on or before the date fixed for such filing, the council or trustees shall not proceed further with the work unless three-fourths of the members of said council or board of trustees shall vote to proceed with such work. If no such protest is filed, or if such protest is filed and three-fourths of the council or trustees shall vote to proceed with such work, the council or trustees shall, at its next regular meeting, proceed to consider the same, and shall then or at a subsequent time proceed to enact an ordinance for such improvement. By the provisions of such ordinance, a local improvement district shall be established to be called "Local Improvement District No.," which shall include all the property fronting on the street to be improved, between the points named in such resolution, to the distance back from such street, if platted in blocks, to the center of the blocks; if platted in lots only, to the center of the lots, and if not platted to the distance of one hundred and twenty-five feet. Such ordinance shall provide that such improvements shall be made and that the cost and expense thereof shall be taxed and assessed upon all property in such local improvement district, which cost shall be assessed in proportion to the number of feet of such lands and lots fronting thereon, and included in said improvement district, and in proportion to the benefits derived by said improvements: *Provided*, That the city council or trustees may expend from the general fund for such purposes such sums as in their judgment may be fair and equitable in consideration of benefits accruing to the general public by reason of such improvement.

The expense of all improvements in the space formed by the junction of two or more streets, or where one main street terminates in or crosses another main street, and also all necessary street crossings or cross-ways at corners, and intersections of streets, and the expense of establishing, building and repairing bridges in such city, shall be paid by such city. The expense incurred in making and repairing sewers in any street shall be paid by the city. When any work for improvement mentioned in this section is done or made on one side of the center lines of said streets, avenues or public highways, the lots or portions of lots fronting on that side only shall be assessed to cover the expenses of said work according to the provisions of this section. Whenever any expense or cost of work shall have been assessed on any lands, the amount of said expenses shall become a lien upon said lands, which shall take precedence of all other liens, and which may be foreclosed in accordance with the provisions of the Code of Civil Procedure.

Such suit shall be in the name of the City of (naming it) as plaintiff, and in any such proceedings where the court trying the same shall be satisfied that the work has been done or material furnished, which, according to the true intent of this section, would be properly chargeable upon the lot or lands through or by which the street, alley or highway improved or repaired may pass, a recovery shall be permitted or a charge enforced to the extent of the proper proportion or the value of the work, or material which would be chargeable on such lot or land notwithstanding any informalities, irregularities or defects in any of the proceedings of such municipal corporation or any of its officers.

5. Upon the passage of an ordinance as herein provided the committee on streets, together with the city engineer, or other proper authority of such city, town or village, shall make out an assessment roll according to the provisions of the said ordinance, and shall certify the same to the council or trustees of such city, town or village.

6. Upon receiving the said assessment roll, the clerk of such city, town or village shall give notice by three successive publications in the official newspaper of such city, town or village that such assessment roll is on file in his office, the date of filing of same, and said notice shall state a time at which the council or trustees will hear and consider objections to said assessment roll by the parties aggrieved by such assessments. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, within ten days from the last publication provided herein, file with the clerk his objections in writing to said assessment.

7. At the time appointed for hearing objections to such assessment the council shall hear and determine all objections which have been filed by any party interested to the regularity of the proceedings in making such assessment and the correctness of such assessment, or of the amount levied on any particular lot or parcel or land; and the council shall have the power to adjourn such hearing from time to time, and shall have power, in their discretion, to revise, correct, confirm or set aside such assessment and to order that such assess-

ment be made de novo, and such council shall pass an order approving and confirming said assessment as corrected by them, and their decision and order shall be a final determination of the regularity, validity and correctness of said assessment to the amount thereof, levied on each lot and parcel of land.

8. Any person who has filed objections to such assessment or re-assessment as hereinbefore provided, shall have the right to appeal to the District Court of this State and county in which said city or village may be situated.

9. Such appeal shall be taken by filing a written notice of appeal with the clerk of such city or village within ten days after such assessment or re-assessment roll shall have been approved and confirmed by the council or trustees, and said notice shall describe the property and the objections of such appellant to such assessment, and such appellant shall also file with the clerk of the District Court aforesaid within twenty days from the approval and confirmation of such roll by the council or trustees, a copy of said notice of appeal, assessment or re-assessment roll and proceedings thereon, certified by the clerk of such city or village, together with a bond to such city or village, conditioned to pay all costs that may be awarded against the appellant in such sum not less than two hundred dollars and with such security as shall be approved by the judge of said court, and the case shall be docketed by the clerk of such court in the name of the person taking the appeal, against the city or village as "An appeal from assessments." Said cause shall then be at issue and shall have precedence over all civil cases pending in said court, except proceedings under the act relating to eminent domain by cities and towns, actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of the appellant, from which judgment an appeal shall lie to the Supreme Court, as in other causes. In case the assessment is confirmed, the fees of the clerk of the city or village for copies of the record shall be taxed against the appellant with other costs.

10. All such assessments shall be known as "Special assessments for improvements," and shall be levied and collected as a separate tax in addition to the taxes for general revenue purposes to be placed on the tax roll for collection, subject to the same penalties and collected in the same manner as other city or village taxes.

11. Whenever the mayor and council, or trustees, of any city or village shall, under authority vested in them by any law of this State and the charter of such city or village, cause any street, avenue or alley in such city or village to be graded, curbed, graveled, paved, repaired or macadamized, or any other local improvements, the expense of which is chargeable to the abutting, adjoining, contiguous or approximate property, they may, in their discretion, provide for the payment of the costs and expenses thereof by installments, instead of levying the entire tax or special assessment for such costs at one time, and for such installment they may issue, in the name of such city or village, improvement bonds of the district, which shall

include the adjoining, contiguous and approximate property liable to assessment for such local improvement according to the city or village charter, payable in installments of equal amounts each year; none of which bonds nor any of the installments shall run longer than five years nor bear interest exceeding eight per centum per annum.

Such bonds may be issued to the contractors constructing the improvement in payment thereof, or the mayor and council, or trustees by charter and ordinance of said city or village, or other authorized officer or officers of said city or village, may sell the same at not less than their par value, net, and pay the proceeds thereof to the contractor. Such bonds shall not be issued in amount in excess of the contract price of the work or improvement, except that the installment coupons shall include the interest on such installments to the maturity thereof. The bonds shall be of such denomination as the mayor and council, or trustees, shall deem proper. When district bonds are issued under this section for improvements, the cost of which is by law charged by special assessment against specific property, the mayor and council, or trustees, or other authorized officer, board or body, shall levy special assessments each year sufficient to redeem the installments of such bonds next thereafter maturing, but in computing the amount of special assessment to be levied against each piece of property liable therefor, interest thereon not exceeding eight per cent per annum from the date of the issuance of said bonds until the maturity of the installments of bonds next thereafter maturing. Such assessments shall be made upon the property chargeable for the cost of such improvements, respectively, and shall be levied and collected in the same manner as may be provided by law, and the charter and ordinance of such city for the levy and collection of special assessments for such improvements where no bonds are issued, except as otherwise provided by this section. But the basis of such assessment, whether upon such assessed valuation, frontage, or otherwise liable for such costs, shall be retained for the assessment of succeeding installments of said bonds. The owner of any piece of property liable for any special assessment may redeem his property from such liability by paying the entire assessment chargeable against his property (upon the city clerk mailing him a written or printed notice) thirty days before the issuance of the bonds or after the issuance of the bonds by paying all the installments of the assessments which have been levied and also the amount of unlevied installments with interest on the latter at the rate of eight per centum per annum from the date of the issuance of the rate bonds to the time of maturity of the last installment. In all cases where installments of the assessments not yet levied and paid as above provided, whether before or after the issuance of the bonds, the same shall be paid to the city treasurer, who shall receipt therefor, and all sums so paid shall be applied solely to the payment of such improvements or the redemption of the bonds issued therefor.

When any piece of property has been redeemed from liability for the cost of any improvement as herein provided, such property shall not thereafter be liable for further special assessments for the costs of such improvement except as hereinafter provided.

No suit to set aside the special assessment or to enjoin the making of the same shall be brought, nor any defense to the validity thereof be allowed after the expiration of thirty days from the time the amount due on each lot or piece of ground liable for such assessment is ascertained and confirmed by the council or trustees. The funds arising by such assessment shall be applied solely towards the redemption of said bonds.

12. Such bonds, when issued to the contractor constructing the improvement in payment thereof or when sold as above provided, shall transfer to the contractor, or either owner or holder, all the right and interest of such city or village in and with respect to every such assessment, and the lien thereby created against the property of such owners assessed as shall have not availed themselves of the provisions of this section in regard to the redemption of their property as aforesaid, shall authorize said contractor and his assigns, and the owners and holders of said bonds, to receive, sue for and collect, or have collected, such assessment embraced in any such bond or through any of the methods provided by law for the collection of assessments for local improvements.

And if the city shall fail, neglect or refuse to pay said bonds, or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose any lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds and interest thereon, five per centum, together with the costs of such suit, including a reasonable sum as attorneys' fees.

Any number of holders of such bonds for any single improvement may join as plaintiff, and any number of holders of the property on which the same are a lien, may be joined as defendants in such suit. And such bonds shall be equal liens upon the property for the assessments represented by such bonds without priority of one over another to the extent of the several assessments against the several lots and parcels of land.

13. In all cases of special assessments for local improvements of any kind against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality or irregularity or non-conformance with the charter provisions of laws governing such assessments, the city council or trustees or other authorized board or body shall be and they are hereby authorized to re-assess such special taxes or assessments and to enforce their collection in accordance with the provisions of law existing at the time the re-assessment is made; and it is further provided that whenever, for any cause, mistake or inadvertence the amount assessed shall not be sufficient to pay the cost of the improvement made and enjoyed by owners of property in the local assessment district where the same is made, that it shall be lawful, and the city council or trustees, or other authorized board or body, is hereby directed and authorized to make re-assessments on all the property in said local assessment district sufficient to pay for such improvement, such re-assessment to be made and collected in accordance with the provisions of the law or ordinance existing at the time of its levy.

14. Nothing shall be construed as repealing or modifying any existing manner and method for cities of the first class, or those organized under special or local laws, to make improvements as herein provided for, but shall be construed as an additional and concurrent power and authority. Any city whose charter provides for the issuance of bonds for local improvements payable only from the proceeds of special assessments, is hereby authorized to issue such bonds in the manner and with the effect provided in this section, and the holder of any such bond shall look only to the fund provided by such assessment for the principal or interest of such bond.

15. The holder of any bond issued under the authority of this section shall have no claim therefor against the city or village by which the same is issued, in any event, except from collection of the special assessment made for the improvement for which said bond was issued, but his remedy in case of non-payment shall be confined to the enforcement of such assessments. A copy of this subdivision shall be plainly written, printed or engraved on the face of each bond so issued.

Seventh. Raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village, and to regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed: *Provided, however,* That all scientific and literary lectures and entertainments shall be exempt from such taxation.

Eighth. License, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amounts to be paid for such license: *Provided,* That the city council or board of trustees may grant permits to druggists for the sale of liquors for medicinal, mechanical, sacramental and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinances: *Provided, further,* That in granting licenses such corporate authority shall comply with whatever general laws of the State may be in force relative to the granting of licenses.

Ninth. Impose a license tax not less than three nor more than ten dollars upon the owners and harborers of dogs, and enforce the same by appropriate penalties, and to authorize the destruction of any dog, the owner or harborer of which shall neglect or refuse to pay such license tax: *Provided,* That no such license shall authorize the keeping, owning or harboring of more than one dog.

Tenth. Appoint judges and clerks of all elections, and prescribe the manner of conducting the same, and the return thereof, and of holding special elections for any purpose provided by law.

Eleventh. Make all such ordinances, by-laws, rules, regulations, resolutions, not inconsistent with the laws of the State, as may be expedient, in addition to the special powers in this title granted, maintaining the peace, good government and welfare of the corporation and its trade, commerce, manufactures, and to enforce all ordinances by inflicting fines or penalties for the breach thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, and in default of payment, to provide for confinement

in prison or jail, and at hard labor upon the streets or elsewhere for the benefit of the city or village.

Twelfth. Regulate and prescribe powers and duties, and compensations of officers not herein provided for, and to require of all officers and servants elected, approved bonds and security for the faithful performance of their duties.

Thirteenth. Make contracts with, and authorize any person, company or association, to erect gas works and to give such persons, companies or associations the exclusive privilege for furnishing gas to light the streets, lanes and alleys, for any length of time not exceeding five years.

Fourteenth. Establish, alter and change the channels of water courses, and to wall them and cover them over; to establish, make and regulate public wells, cisterns, windmills, aqueducts and reservoirs of water, and to provide for the filling of the same.

Fifteenth. Regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition, and the expense of impounding and keeping the same, and of such sale.

Sixteenth. Provide for the erection of all needful pens and pounds, within or without the city limits, and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

Seventeenth. Regulate the construction of and order the suppression and cleaning of fireplaces, chimneys, stoves, stovepipe, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business, which may be dangerous in causing or promoting fires, and to prescribe limits in which no dangerous or obnoxious and offensive business may be carried on.

Eighteenth. Prescribe and alter the limits within which no building shall be constructed except of brick, stone or other incombustible material, with fireproof roof, and after such limits are established no special permits shall be given for the erection of buildings of combustible material within said limits.

Nineteenth. Regulate levees, depots, depot grounds and places for storing freights and goods, and to provide for and regulate the passage of railways through streets and public grounds of the city or village.

Twentieth. Regulate the crossings of railway tracks, and to provide precautions and prescribe rules regulating the same; and to regulate the running of railway engines, cars or trucks within the limits of said city or village, and prescribe rules relating thereto, and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings, and on the tracks or railways, and to prevent fires from engines.

Twenty-first. Establish standard weights and measures, and regulate the weights and measures to be used in the city or village, and to regulate the weighing and measuring of every commodity sold in the city or village, in all cases not otherwise provided by law.

Twenty-second. Provide for the inspection of hay, grain and

coal, the measuring of wood and fuel to be used in the city or village, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for sale hay, coal and wood; to fix the fees and duties of persons authorized to perform the duties named in this subdivision.

Twenty-third. Remove all obstructions from the sidewalks, curb stones, gutters and cross-walks at the expense of the person placing them there, or of the city or village, and to require and regulate the planting and protection of shade trees in the streets, the building of bulkheads, cellar and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, all other excavations through or under the sidewalks in said city or village.

Twenty-fourth. Prevent and restrain riots, routs, noises, disturbances, or disorderly assemblies; to regulate, punish and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any building; to regulate, prevent and punish the carrying of concealed weapons; to arrest, regulate, punish, fine or set at work on the streets or elsewhere all vagrants and persons found without visible means of support or some legitimate business.

Twenty-fifth. Prevent and remove all encroachments upon and into all sidewalks, streets, avenues, alleys or other city or village property, and to punish and prevent all horse racing, fast driving or riding in the streets, highways, alleys, bridges or places in the city or village, and all games, practices or amusements therein likely to result in damage to any person or property; to regulate, prevent and punish the riding, driving and passing of horses, mules, oxen, cattle or other teams, or any vehicle over, upon or across sidewalks or along any street of the city or village.

Twenty-sixth. Open, widen or otherwise improve or vacate any street, avenue, alley or lane, in the limits of the city or village; and also create, open and improve any new street, avenue, alley or lane: *Provided*, That all damages sustained by the citizens of the city or village or of the owners of the property therein shall be ascertained in such manner as shall be provided by ordinance: *Provided, further*, That whenever any street, avenue, alley or lane shall be vacated, the same shall revert to the owner of the adjacent real estate, one-half on each side thereof.

Twenty-seventh. Create, open, widen or extend any street, avenue, alley or lane, or annul, vacate or discontinue the same whenever deemed expedient for the public good, and to take private property for public use or for the purpose of giving right of way or other privileges to any railroad company, or for the purpose of erecting or establishing market houses or market places, or for any other necessary public purpose: *Provided, however*, That in all cases the city or village shall make the person or persons whose property shall be taken or injured thereby adequate compensation therefor, to be determined by the assessment of five disinterested holders, who shall be elected and compensated as may be prescribed by ordinance, and

who shall, in the discharge of their duties, act under oath faithfully and impartially to make the assessment to be submitted.

Twenty-eighth. Borrow money on the credit of the city, and pledge the credit, revenue and public property of the city for the payment thereof, when authorized in the manner hereinafter provided; and to evidence the same by issuance of bonds, with proper interest coupons attached thereto.

Twenty-ninth. All ordinances shall be passed pursuant to such rules and regulations not inconsistent with the general laws relating thereto as the council or board of trustees may provide; and all such ordinances may be proved by the certificate of the clerk under the seal of the city or village, and when printed or published in book or pamphlet form by authority of the city or village, shall be read and received in evidence in all courts and places without further proof.

Thirtieth. The council or trustees shall cause to be published semi-annually a statement of the receipts of the corporation and source thereof, and an itemized account of expenditures, with a statement of the financial condition of the city or village.

Thirty-first. Purchase, hold and pay for, in the manner herein provided, lands not exceeding eighty acres in one body outside of the corporate limits, for the purpose of the burial of the dead, and all necessary grounds, hospital grounds and water works.

Thirty-second. Survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds and avenues leading thereto, owned by said city or village; to construct walks and protect ornamental trees therein, and provide for paying the expenses thereof.

Thirty-third. Convey cemetery lots by certificates signed by the mayor or chairman and countersigned by the clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number, as laid down on such map, or plat, for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lots for the sole purpose of interment, under the regulation of the city council, or board of trustees, and such certificate shall be entitled to be recorded in the office of the county recorder of the proper county, without further acknowledgment, and such description of lots shall be deemed and recognized as sufficient description thereof.

Thirty-fourth. Limit the number of cemetery lots which shall be owned by the same person at the same time; to prescribe rules for inclosing, adorning and directing monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, and any improper adornment thereof; but no religious test shall be made as to the ownership of the lots, the burial therein or the ornamentation of graves or of such lots.

Thirty-fifth. Pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof and trespassers therein, and the officers of such city or village shall have as full jurisdiction and power in the enforcement of such rules as though they related to the corporation itself.

Thirty-sixth. Acquire, by purchase or otherwise, water works or plants, and illuminating plants, and to supply the municipalities and the inhabitants thereof with water and light, and to charge private persons and corporations for water and light, or either; but all such charges for rates shall be reasonable and shall be uniform and equal to all alike and based upon the service supply, proportionately, without discrimination in favor of or against any person or persons whomsoever.

Thirty-seventh. To prevent and extinguish fires, and for that purpose to purchase fire engines and to erect engine houses, and purchase hose carts, hose, hooks, ladders, trucks, buckets, ropes, and all other apparatus, to maintain a fire department, to provide cisterns, hydrants, water works, or purchase water for fire purposes from others maintaining water works in such town or village, in such manner as the council or trustees by ordinance determine.

Historical: Laws 1893, 97, Sec. 69; amended Laws 1897, 34, Sec. 69; re-enacted Laws 1899, 192, Sec. 73; amended Laws 1901, 90, Sec. 1; amended Laws 1903, 411, Sec. 1; amended Laws 1905, 113, Sec. 1; amended Laws 1907, 509, Sec. 1. Subd. 37 is taken from Rev. St. 1887, Sec. 2230, Subd. 12, declared to be still in force, notwithstanding Laws 1899, 192, Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8711, et seq.

Cross Reference: Cities and villages may make and enforce local police regulations: Const. Art. 12, Sec. 2. May contract indebtedness and own property for school, water, sanitary and illuminating purposes: Const. Art. 12, Sec. 4. Shall not become stockholders in corporations: Const. Art. 12, Sec. 4. License of liquor dealers: Sec. 1513. Contract for supplying city with water: Sec. 2838. Determination of water rates: Sec. 2839. Gas companies cannot lay pipes in streets without permission from city authorities: Sec. 3041. May establish public libraries: Sec. 675.

Cited: State v. Preston (1894) 215; 38 Pac. 694. Carson v. City of Genesee (1903) 9 Ida. 244; 74 Pac. 862.

Village of Sand Point v. Doyle (1905) 11 Ida. 642; 83 Pac. 598.

Dissolution of Corporation: The trustees of a town have no right or power under this section to dissolve or attempt to dissolve the corporation; this can only be accomplished by act of the Legislature. People v. Bancroft (1892) 3 Ida. 356; 29 Pac. 112.

Levy of Taxes: The power of towns and villages to levy a tax for general revenue purposes does not authorize them to levy a property road tax. City of Genesee v. Latah Co. (1894) 4 Ida. 141; 36 Pac. 701.

Repair of Streets: The right of towns and villages to repair highways, streets and alleys is exclusive, and the county commissioners cannot authorize a road overseer to go within the limits of any organized town or village to repair, or interfere with, its streets or alleys. Ib.

Fire Departments: Subd. 12 of Rev. St. Sec. 2230, which empowers municipal boards of trustees to purchase fire engines and other apparatus and to maintain fire departments, is not in conflict with, nor repealed, by, the act of which this section is a part. Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969.

Suppression of Prostitution.

Sec. 2239. City councils, boards of aldermen and boards of trustees of cities and towns and villages in this State, heretofore incorporated under special or general laws, or hereafter incorporated, are hereby vested with authority and power to regulate or to suppress and prohibit prostitution within the limits of their respective cities, towns and villages; and are hereby authorized and empowered to pass such ordinances, by-laws, rules and regulations as may be necessary to effect such regulation, suppression or prohibition within their respective cities, towns and villages.

Historical: Laws 1899, 295, Sec. 1; re-enacting Laws 1897, 18, Sec. 1.

Highway Labor and Commutation Fee.

Sec. 2240. Each city and village governed by this title is hereby empowered to provide that all the able bodied male residents of the corporation between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of September of each year, either by themselves or satisfactory substitutes, perform two days' labor upon the streets, alleys or highways within such corporation at such times as the proper officer may direct and upon three days' notice given in writing. They may further provide that, for each day's failure to attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding one dollar for each day's delinquency. The amount so due shall be treated and collected as taxes on property and the same shall be a lien on all the property of such persons that may be listed and assessed for taxation for that year; and it shall be the duty of the city council or trustees to certify the amount due from each individual as aforesaid to the county tax collector as hereinafter provided. And the certificate of the city or village clerk, under the seal of the city, that the person named therein has performed labor as herein required, shall be received by the county tax collector in discharge of the amount due from such person.

Historical: Laws 1899, 192, Sec. 74;
re-enacting Laws 1893, 97, Sec. 70.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8749.

Drainage of Stagnant Water.

Sec. 2241. Each city and village governed by this title shall have power to cause any lot of land within its limits on which water may at any time become stagnant to be filled up or drained in such manner as may be directed by a resolution of the council or trustees; and such owner or his agent shall, after service of a copy of such resolution or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, comply with the directions of such resolution within the time therein specified; and in case of a failure or refusal to do so, it may be done by said corporation; and the amount of money so expended shall be assessed against such property, and the amount thereof collected as other special assessments.

Historical: Laws 1899, 192, Sec. 75;
re-enacting Laws 1893, 97, Sec. 71.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8750.

Supervision of Streets, Bridges and Squares.

Sec. 2242. The city council or board of trustees shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the city or village, and shall cause the same to be kept open and in repair and free from nuisances. The city shall have power by ordinance to sell and convey all public squares, streets and alleys within the city or village: *Provided*, A petition containing the signatures of three-fourths of the property holders of said city be presented to the city council, and that said petition be published not less than four weeks in a paper published in said city, and that any person aggrieved by said sale shall state

cause why said property should not be sold to the District Court of said county wherein said city is situated, and if the said court shall decide that said party or parties have shown good and sufficient cause why said public property should not be so disposed of, then said public property shall not be sold. The proceeds of such property shall not be used for any other purpose except to pay any indebtedness against said city or for public improvement in said city.

All public bridges exceeding sixty feet in length over any stream crossing a State or county highway shall be constructed and kept in repair by the county: *Provided*, That when any city or village has constructed a bridge over sixty feet span on any county or State highway within its corporate limits and has incurred a debt for the same, then the treasurer of the county in which said bridge is located shall pay to the treasurer of said city or village seventy-five per cent of all bridge taxes collected in said city or village until said debt and interest upon the same is fully paid: *Provided, further*, That the council or trustees may appropriate in the manner hereinafter provided, a sum not exceeding five dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city or village on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city or village is located, from another State, and that no street or alley which shall hereafter be dedicated to public use by the proprietor of ground in any city or village, shall be deemed a public street or alley, or be under the use or control of the city council or board of trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

Historical: Laws 1899, 192, Sec. 81; re-enacting Laws 1893, 97, Sec. 77.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8756.

Cross Reference: City council and village trustees have powers of county commissioners with respect to the streets within the city and village: Sec. 893. Railroads not to use streets without a two-thirds vote by municipal authorities. Const. Art. 11, Sec. 11. Also Codes Sec. 2807.

Liability for Defective Streets: A bridge connecting two streets within the corporate limits of a village is under the exclusive control of the village, and the village is bound to keep

it in repair and safe for the accommodation of the traveling public, and is liable for any injury resulting to a traveler from its neglect of duty in that respect. Village of Sand Point v. Doyle (1905) 11 Ida. 642; 83 Pac. 598.

Cities and villages have exclusive control over streets, etc., within their limits, and are liable to a traveler on such streets who is injured by a negligent discharge by the municipality of the duties imposed by this section. Carson v. City of Genesee (1903) 9 Ida. 244; 74 Pac. 862. Eaton v. City of Weiser (1906) 12 Ida. 544; 86 Pac. 541.

Disposition of Discontinued Streets.

Sec. 2243. In all cases where any street, highway, avenue, alley or lane in any incorporated city, town, or village, shall have been or shall hereafter be annulled, vacated, or discontinued, the mayor and common council of such city, or the board of trustees of such town or village, may, by ordinance, dispose of the part or portion of such street, highway, avenue, alley or lane so vacated, annulled, or discontinued, and may direct a conveyance thereof to be executed by the mayor of such city, or the chairman of the board of trustees of such town or village, to the person named in such ordinance; and such deed, when

so executed and delivered, shall operate to convey a good and valid title in and to the said premises to the person named therein. This section shall apply to all cities, towns, and villages, whether incorporated under special or general laws.

Historical: Laws 1901, 14, Secs. 1, 2.

Regulation of Huckstering.

Sec. 2244. No charge or assessment of any kind shall be made or levied on any wagon or other vehicle or the horses thereto attached, or on the owner bringing produce or provisions to any of the markets in the city or village, or standing in or occupying a place in any of the market spaces of the city or village or in the streets contiguous thereto, on market days and evenings previous thereto; but the city council or board of trustees shall have full power to prevent forestalling, to prohibit or regulate hucksterings in the markets, to prescribe the kind and description of articles which may be sold, and the stands or places to be occupied by the vendors, and may authorize the immediate seizure and arrest or removal from the markets of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

Historical: Laws 1899, 192, Sec. 82; re-enacting Laws 1893, 97, Sec. 78.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8757.

CHAPTER 6.

MUNICIPAL ELECTIONS.

Section.	Section
2245. Time for holding elections.	2251. Notice to register.
2246. Notice of election.	2252. Compensation of registrars.
2247. Filling vacancies among judges and clerks.	2253. Application of preceding sections.
2248. Qualifications of electors.	2254. Certificates of election.
2249. Appointment of registrars.	2255. Application of general election law.
2250. Registration books and electors' oaths.	

Time for Holding Elections.

Sec. 2245. On the first Tuesday of April, 1909, and biennially thereafter an election shall be held in each city and village governed by this title, for officers as in this title provided. All of such officers shall be elected and hold their respective offices for a term of two years, and until their successors are elected and qualified. At said election the qualified voters of such city may cast their ballots between the hours of nine o'clock A. M. and seven o'clock P. M.

Historical: Laws 1899, 192, Sec. 60; re-enacting Laws 1893, 97, Sec. 60; amended Laws 1905, 385, Sec. 1. "1909" inserted for "1905."

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8700.

Notice of Election.

Sec. 2246. The board of trustees shall give public notice of the time and place of holding each election; said notice to be given not less than ten nor more than twenty days previous to the election.

Historical: Laws 1899, 192, Sec. 50; re-enacting Laws 1893, 97, Sec. 50. "Each" is inserted for "such" before "elections" and the position of this section is changed. The section originally appeared in the subdivision of the act relating to village government, and required notice of "such" elections to be given. A careful search of the subdivision failed to disclose any election mentioned therein to which the section could apply. The

Nebraska statute from which the law was taken, verbatim, has "each" election. The substitution is made on the authority of that act, and the position is changed as above noted, so that it is believed that the ambiguity is cleared, and the legislative intent effectuated.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8690.

Filling Vacancies Among Judges and Clerks.

Sec. 2247. If, on any day appointed for holding any election under the provisions of this title, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

Historical: Laws 1899, 192, Sec. 51; re-enacting Laws 1893, 97, Sec. 51. The position of this section is changed for the reason stated in the note to the preceding section.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8691.

Qualifications of Electors.

Sec. 2248. All qualified electors of this State who shall have resided within the limits of any city of the second class, or village, for three months preceding any election therein, shall be entitled to vote at all city and village elections.

Historical: Laws 1899, 192, Sec. 61; re-enacting Laws 1893, 97, Sec. 61.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8701.

Appointment of Registrars.

Sec. 2249. The council of every city, and board of trustees of every village in the State of Idaho shall, biennially, not more than two months before every village or city election, appoint a registrar for each ward or election precinct in such city or village, who shall perform the same duties, as nearly as may be, as are required of the registrars of election precincts under the general laws of the State.

Historical: Laws 1905, 36, Sec. 1. Omitting "immediately after the passage of this act" and inserting "biennially" for "annually." This act was approved March 10, 1905, at which

time the law provided for annual municipal elections. But by an act approved March 15, 1905, (Laws 1905, 385, Sec. 2245, Ante), biennial elections were provided for.

Registration Books and Electors' Oaths.

Sec. 2250. The city or village clerk, as the case may be, shall provide, at the expense of the city or village, registration books and blank elector's oaths, in form similar to those used for county and State registration, and such other materials as may be necessary to carry out the purposes of this chapter.

Historical: Laws 1905, 36, Sec. 2.
Cross Reference: Form of registra-

tion books: Sec. 394; of electors' oaths: Sec. 396.

Notice to Register.

Sec. 2251. Such registrars shall take the statutory oath of office, and shall give notice substantially as required of registrars in cases of State and county registration: *Provided*, That such notice shall re-

quire the registrar to be at his place of registration on the four Saturdays next preceding the day of election, and registration on other days during the same period shall be under the same regulations as are provided by law for State and county registration.

Historical: Laws 1905, 36, Sec. 3. "Statutory" inserted for "constitutional" oath of office. There is no constitutional oath except for members of the Legislature. See Const. Art. 3. Sec. 25.

Cross Reference: Oath of office: Sec. 268. Notice of registration: Sec. 396.

Compensation of Registrars.

Sec. 2252. The compensation of registrars shall be the same as that of the registrars appointed under the general laws of the State, and shall be paid by the city or village as the case may be.

Historical: Laws 1905, 36, Sec. 4.

Cross Reference: Compensation of registrars: Sec. 401.

Application of Preceding Sections.

Sec. 2253. The four preceding sections shall not apply to cities having special charters which provide for registration.

Historical: Laws 1905, 36, Sec. 5.

Certificates of Election.

Sec. 2254. Certificates of election for all officers of cities and villages shall be made out, under the corporate seal, by the city council or board of trustees, at their first meeting after any election of such officers.

Historical: Laws 1899, 192, Sec. 62; re-enacting Laws 1893, 97, Sec. 62.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8702.

Application of General Election Law.

Sec. 2255. All elections held in villages or cities as provided for in this title, shall be conducted in manner and form as provided by the general election law of the State.

Historical: Laws 1899, 192, Sec. 109; re-enacting Laws 1893, 97, Sec. 105.

Cross Reference: General election law: Title 3 of this Code.

CHAPTER 7.

MUNICIPAL FINANCES.

Section	Section
2256. Duties of treasurer.	2265. Collection of municipal taxes.
2257. Trustees to keep account of moneys.	2266. Payment by assessor to city treasurer.
2258. Publication of financial statements.	2267. Fiscal year.
2259. Same.	2268. Annual appropriation bill.
2260. Non-compliance with law a misdemeanor.	2269. Same: Estimate of expenses.
2261. Deposit of municipal funds.	2270. Expenditures not to exceed appropriation.
2262. Warrants: How drawn.	2271. Expenses not to precede appropriation.
2263. Presentation of claims.	2272. Special assessments: How used.
2264. Payment of claims.	

Duties of Treasurer.

Sec. 2256. The treasurer of each city and village shall be the custodian of all money belonging to the corporation; he shall keep a separate account of each fund or appropriation, and the debits and credits belonging thereto; he shall give to every person paying money into the treasury a receipt therefor specifying the date of payment and on what account paid; he shall also file copies of such receipts with his monthly reports; he shall at the end of each and every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office, and if said treasurer neglect or fail, for the space of ten days from the end of each and every month, to render his said account, his office shall be declared vacant, and the city council or board of trustees shall fill the vacancy by appointment until the next election for city or village officers.

Historical: Laws 1899, 192, Sec. 64; re-enacting Laws 1893, 97, Sec. 64.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8704.

Removal of Treasurer: In order that the board of trustees may declare the treasurer's office vacant for failure to render the accounts required by this

section, the board must first find as a fact that the treasurer failed to render such accounts before they can declare a vacancy or fill the same by appointment. *Village of Kendrick v. Nelson* (1907) 13 Ida. —; 89 Pac. 755.

Trustees to Keep Account of Moneys.

Sec. 2257. It shall be the duty of the board of trustees in every incorporated town, city or village within the State of Idaho, to cause to be kept an accurate account of all moneys received; the sources from whence derived, and all moneys expended, and the purposes to which applied.

Historical: Laws 1899, 192, Sec. 65; re-enacting Laws 1893, 16, Sec. 1.

Publication of Financial Statements.

Sec. 2258. It shall be the duty of the treasurer of such towns, cities and villages to cause to be published, for at least one insertion, in some newspaper within said town, city or village, between the first and second Mondays of January, April, July and October of each year, a full statement of the receipts and expenditures of said town, giving the source from whence received, to what purpose applied and to whom paid.

Historical: Laws 1899, 192, Sec. 66; re-enacting Laws 1893, 16, Sec. 2.

Same.

Sec. 2259. For the purpose of causing these reports to be published as required, the trustees of every city, town and village shall make such provision as may be necessary to carry into effect the requirements of this title.

Historical: Laws 1899, 192, Sec. 67;
re-enacting Laws 1893, 16, Sec. 3.

Non-Compliance With Law a Misdemeanor.

Sec. 2260. A failure upon the part of the treasurer of any town, city or village to comply with the requirements of this title shall be deemed a misdemeanor.

Historical: Laws 1899, 192, Sec. 68;
re-enacting Laws 1893, 16, Sec. 4.

Deposit of Municipal Funds.

Sec. 2261. The treasurer may be required to keep all money in his hands belonging to the corporation in such place or places of deposit as may be provided by ordinance, but no such ordinance shall be passed by which the custody of such money shall be taken from the treasurer and deposited elsewhere than in some regularly organized bank, nor without a bond to be taken from such bank, in such penal sum and with such security as the council or board of trustees shall direct and approve, sufficient to save the corporation from any loss, but such penal sum shall not be less than the estimated receipts for the current year from taxes and special assessments levied and to be levied by the corporation.

Historical: Laws 1899, 192, Sec. 69;
re-enacting Laws 1893, 97, Sec. 65:

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8705.

Warrants: How Drawn.

Sec. 2262. All warrants drawn upon the treasurer must be signed by the mayor or chairman, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn, and the amount already expended of such fund.

Historical: Laws 1899, 192, Sec. 70;
re-enacting Laws 1893, 97, Sec. 66.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8706.

Cited: Theiss v. Hunter (1896) 4
Ida. 788; 45 Pac. 2.

Signature of Warrants: It is the duty of the mayor to sign a warrant presented to him for signature on a claim allowed by the city council. Rice v. Gwinn (1897) 5 Ida. 394; 49 Pac. 412.

Presentation of Claims.

Sec. 2263. All claims against the city or village must be presented to the council or trustees in writing, with a full account of the items, verified by the oath of the claimant, or his agent, that the same is correct, reasonable and just, and no claims or demands shall be audited or allowed unless presented and verified as provided for in this section; and no costs shall be recovered against such city or village in any action brought against it for any unliquidated claim which has not been presented to the city council or board of trustees to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed with interest due.

Historical: Laws 1899, 192, Sec. 84;
re-enacting Laws 1893, 97, Sec. 80.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8759.

Payment of Claims.

Sec. 2264. Upon the allowance of claims by the council or trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable, as specified in the annual appropriation bill to be passed in the manner hereinafter provided: and no order or warrant shall be drawn in excess of fifty per centum of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury to the credit of the proper fund for its payment, and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn.

Historical: Laws 1899, 192, Sec. 85; re-enacting Laws 1893, 97, Sec. 81.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8760.

Collection of Municipal Taxes.

Sec. 2265. The council or trustees of each city or village shall, at the time provided by law, cause to be certified to the county tax collector the percentage or number of mills on the dollar of tax levied for all city or village purposes by them on the taxable property within said corporation for the year then ensuing as shown by the assessment roll for said year, including all special assessments and taxes assessed as hereinbefore provided, and the said tax collector shall place the same on the proper tax lists to be collected in the manner provided by law for the collection of State and county taxes in the county where such city or village is situated, and in all sales for any delinquent taxes for municipal purposes, if there be other delinquent taxes from the same person, or lien upon the same property, the sale shall be for all the delinquent taxes; and such sales and all sales made under and by virtue of this section or the provisions of law herein referred to shall be of the same validity, and, in all respects, be deemed and treated as though sales had been made for the delinquent State and county taxes, exclusively. The amount which may be so certified, assessed and collected, shall not exceed ten mills on the dollar to defray its general and incidental expenses, together with any special assessment or special taxes, or amounts so assessed as taxes under the provisions of this chapter, and such sum as may be authorized by law to be levied for the payment of outstanding bonds and debts.

Historical: Laws 1899, 192, Sec. 86; re-enacting Laws 1893, 97, Sec. 82.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8761.

Cited: *Theiss v. Hunter* (1896) 4 Ida. 788; 45 Pac. 2. *City of Moscow v. Latah Co.* (1896) 5 Ida. 36; 46 Pac. 874.

Not Repealed: This section is not repealed by Laws 1903, 26, authorizing the construction of sewers, and the city authorities may certify sewerage taxes to the county tax collector to be collected as other taxes. *Denning v. City of Moscow* (1905) 11 Ida. 415; 83 Pac. 339.

Payment by Assessor to City Treasurer.

Sec. 2266. The tax collector of the county shall pay over on demand, to the treasurer of any city or village, all money received by him arising from taxes levied belonging to such city or village, together with all money collected as a tax on dogs from the residents of such corporation, for the use of the general fund therein.

Historical: Laws 1899, 192, Sec. 88; re-enacting Laws 1893, 97, Sec. 84.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8763.

Duty of Tax Collector: The tax collector is required to pay over to the city treasurer, on demand, all moneys received by him arising from taxes

levied by said city. Neither the tax collector nor the county has any legal right to retain any part whatever of the taxes so collected as premium for their collection, but all such money must be paid to the city treasurer on demand. *City of Moscow v. Latah Co.* (1896) 5 Ida. 36; 46 Pac. 874.

Fiscal Year.

Sec. 2267. The fiscal year of each city or village shall commence on the first Tuesday of May.

Historical: Laws 1899, 192, Sec. 89; re-enacting Laws 1893, 97, Sec. 85.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8764.

Annual Appropriation Bill.

Sec. 2268. The city council of cities, and board of trustees in villages, shall, within the first quarter of each fiscal year, pass an ordinance to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, not exceeding in the aggregate the amount of tax authorized to be levied during that year, and at the same time said council of cities, and board of trustees in villages, unless provision shall have been made as provided by law, for the funding, refunding, purchase, redemption or exchange of the outstanding city or village warrant indebtedness, must, whenever any city or village shall have warrants outstanding and unpaid for the payment of which there are no funds in the city or village treasury, in addition to other taxes provided by law, if such warrants amount to a sum equal to five per cent or more of the value of the taxable property of such city or village as shown by the last preceding assessment, levy and include in such annual appropriation bill, a special tax assessment of not to exceed ten mills on the dollar, as shown by such preceding assessment; if such warrants amount to a sum equal to four per cent and less than five per cent of such taxable property, they must levy and include in such annual appropriation bill, a special tax or assessment of not to exceed eight mills on the dollar as shown by such preceding assessment; if such warrants amounts to a sum equal to three per cent and less than four per cent of such taxable property, they must levy and include in such annual appropriation bill a special tax or assessment of not to exceed six mills on the dollar as shown by such preceding assessment; if such warrants amount to a sum equal to two per cent and less than three per cent of such taxable property, they must levy and include in such annual appropriation bill a special tax or assessment of not to exceed four mills on the dollar as shown by such preceding assessment; if such warrants amount to one per cent and less than two per cent of such taxable property, they must levy and include in such annual appropriation bill a special tax or assessment of not to exceed two mills on the dollar as shown by such preceding assessment; and if such warrants amount to less than one per cent of such taxable property, then they must levy and include in such annual appropriation bill such special tax or assessment on the dollar as shown by such preceding assessment as shall be sufficient to pay such warrants. All moneys arising

from such special tax or assessment shall be placed in a special fund for the redemption of such warrants, which shall be paid exclusively out of said fund, which shall be known as the warrant redemption fund. All moneys in the city or village treasury at the end of each fiscal year, not needed for current expenses, and applicable thereto, shall be transferred to said warrant redemption fund. Such ordinance shall specify the object and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriation shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or village, either by a petition signed by them, or at a general election duly called therefor, and all appropriations shall end with the fiscal year for which they were made.

Historical: Laws 1899, 192, Sec. 90; re-enacting Laws 1893, 97, Sec. 86; amended Laws 1897, 50, Sec. 1.

Cited: Theiss v. Hunter (1896) 4 Ida. 788; 45 Pac. 2.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8765.

Same: Estimate of Expenses.

Sec. 2269. Before such annual appropriation bill shall be passed, the council or trustees shall prepare an estimate of the probable amount of money necessary for all purposes to be raised in said city or village during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemized and classifying the different objects and branches of expenditures as near as may be with a statement of the entire revenue of the city or village for the previous fiscal year, and shall enter the same at length upon its minutes and cause the same to be published four weeks in some newspaper published, or of general circulation, in the city or village.

Historical: Laws 1899, 192, Sec. 91; re-enacting Laws 1893, 97, Sec. 87.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8766.

Expenditures Not to Exceed Appropriation.

Sec. 2270. The mayor and council, or board of trustees, shall have no power to appropriate, issue or draw any order or warrant on the treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued, has been allowed according to the provisions of this chapter, and appropriations for the class or object out of which such claim is payable has been made as provided in Section 2268. Neither the city council nor board of trustees, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill for the year, except as herein otherwise specially provided; and no expenditures for an improvement to be paid for, out of the general fund of the corporation, shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill: *Provided, however,* That nothing herein contained shall prevent the city council or board of trustees from ordering, by two-thirds vote, the repair or restoration of any improvement, the necessity of which is caused by any casualty or accident happen-

ing after such annual appropriation is made. The city council or board of trustees may, by a like vote, order the mayor or chairman of the board of trustees, and finance committee, to borrow a sufficient sum to provide for the expense necessary to be incurred in making any repairs or restoration of improvements, the necessity for which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum and the interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor or the board of trustees and finance committee, under the sanction of the city council or board of trustees, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

Historical: Laws 1899, 192, Sec. 92;
re-enacting Laws 1893, 97, Sec. 88.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8767.

Expenses Not to Precede Appropriation.

Sec. 2271. No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditures shall have been ordered by the city council or board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

Historical: Laws 1899, 192, Sec. 93;
re-enacting Laws 1893, 97, Sec. 89.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8768.

Special Assessments: How Used.

Sec. 2272. All money received on special assessments shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

Historical: Laws 1899, 192, Sec. 94;
re-enacting Laws 1893, 97, Sec. 90.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8769.

CHAPTER 8.

GENERAL PROVISIONS GOVERNING CITIES AND VILLAGES AND THEIR OFFICERS.

Section		Section	
2273.	Corporate name: Service of process.	2277.	Journal. Record of outstanding bonds.
2274.	Ordinances: Style, publication, and when effective.	2278.	City attorney.
2275.	Passage of ordinances: Appointment of officers.	2279.	Officers not to be interested in contracts: Extra allowances prohibited.
2276.	Same: Reading and title: Amendments.	2280.	Salaries not to be changed during term.

Corporate Name: Service of Process.

Sec. 2273. The corporate name of each city or village governed by

this chapter shall be, the "city (or village) of _____" and all and every process and notice whatever affecting such corporation, shall be served upon the mayor or chairman of the board of trustees, and in his absence, upon the clerk, or in the absence of such officers, then by leaving a certified copy at the office of the clerk.

Historical: Laws 1899, 192, Sec. 57;
re-enacting Laws 1893, 97, Sec. 57.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8697.

Ordinances: Style, Publication, and When Effective.

Sec. 2274. The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of _____ or the chairman and board of trustees of the village of _____," and all ordinances of a general nature shall, before they take effect and within one month after they are passed, be published by written or printed handbill, or one time in some newspaper published in the city or village, but if no paper be published within said city or village, then in some paper having general circulation therein: *Provided, however,* That in case of riot, infectious or contagious diseases, or other impending danger, requiring its immediate operation, such ordinances shall take effect upon the proclamation of the mayor or chairman of the board of trustees, posted in at least five public places in the city or village.

Historical: Laws 1899, 192, Sec. 59;
re-enacting Laws 1893, 97, Sec. 59.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8699.

Passage of Ordinances: Appointment of Officers.

Sec. 2275. On the passage or adoption of every by-law or ordinance, and every resolution or order to enter a contract by the council or board of trustees, the yeas and nays shall be called and recorded, and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council or trustees shall be required. All appointments of the officers by any council or trustees shall be made viva voce and the concurrence of a like majority shall be required, and the names of those voting, and for whom they voted on the vote resulting in an appointment, shall be recorded.

Historical: Laws 1899, 192, Sec. 80;
re-enacting Laws 1893, 97, Sec. 76.
"Voting" inserted after "those" in
next to last line to complete the
sense.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8755.

Cited: Rice v. Gwinn (1897) 5 Ida.
394; 49 Pac. 412.

Same: Reading and Title: Amendments.

Sec. 2276. All ordinances and resolutions, or orders for the appropriation or payment of money, shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees. Ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council or trustees shall dispense with the rule. Ordinances shall contain no subject which shall not be clearly expressed in their title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

Historical: Laws 1899, 192, Sec. 83; re-enacting Laws 1893, 97, Sec. 79.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8758.

Sufficiency of Title: The subject of an ordinance prescribing the payment of a fixed sum as license for retail liquor dealers, prohibiting running a restaurant or lunch counter in con-

nection with saloons, requiring the doors of saloons to be closed on Sunday, and prohibiting music, singing and dancing in saloons, is sufficiently expressed by the title, "An Ordinance Regulating and Licensing Liquor Dealers." Village of St. Anthony v. Brandon (1904) 10 Ida. 205; 77 Pac. 322.

Journal: Record of Outstanding Bonds.

Sec. 2277. The city or village clerk shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council or board of trustees. He shall also keep a record of all outstanding bonds against the city or village, showing the number and amount of each, for and to whom the said bonds were issued; and when any bonds are purchased or paid or cancelled, said record shall show the fact. In his annual report, he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof. He shall also perform such other duties as may be required by the ordinances of the city.

Historical: Laws 1899, 192, Sec. 63; re-enacting Laws 1893, 97, Sec. 63.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8703.

City Attorney.

Sec. 2278. The city or village attorney shall be the legal adviser of the council and board of trustees. He shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the corporation, or that may be ordered by the council or board of trustees. When requested, he shall attend meetings of the council or board, and give them his opinion upon any matters submitted to him, either orally or in writing as may be required.

Historical: Laws 1899, 192, Sec. 71; re-enacting Laws 1893, 97, Sec. 67.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8707.

Officers Not to Be Interested in Contracts: Extra Allowances Prohibited.

Sec. 2279. No officer of any city or village shall be interested directly or indirectly in any contract of which the corporation or any one for its benefits is a party; and any such interest in any such contract shall avoid the obligation thereof, on the part of such corporation; nor shall any officer receive any pay or perquisites from the city other than his salary as fixed by ordinance and this title; and neither the city council or board of trustees shall pay or appropriate any money or other valuable thing to any person not an officer, for the performance of any act, service or duty, the doing or performance of which shall come within the proper scope of the duties of any such officer of such corporation.

Historical: Laws 1899, 192, Sec. 72; re-enacting Laws 1893, 97, Sec. 68.

Comparative Legislation: See Neb. Cobby's An. Stat. Vol. 2, Sec. 8710.

Salaries Not to Be Changed During Term.

Sec. 2280. The emoluments of no officer whose election or appointment is required by this title shall increase or diminish during the

term for which he shall have been elected or appointed; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments have been increased.

Historical: Laws 1899, 192, Sec. 79;
re-enacting Laws 1893, 97, Sec. 75.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8754.

CHAPTER 9.

CHANGING NAMES OF MUNICIPALITIES.

Section

2281. Petition for change: Special election.
2282. Duty of election boards.
2283. Successive elections.

Section

2284. Order changing name.
2285. Expenses of election: How paid.
2286. Existing rights unaffected.

Petition for Change: Special Election.

Sec. 2281. Whenever a majority of the legal voters of any incorporated town, village or city shall present a petition to the board of county commissioners of the county in which such town, village or city is situated, praying that a special election may be called in said town, village or city for the purpose of voting on the question of changing the name of such town, village or city, and if such board, or a majority of the members thereof, shall be satisfied, by affidavit or other proof, that a majority of the legal voters of such town, village or city have signed such petition, it shall be the duty of such board to forthwith give notice of the filing of such petition, by publishing such notice in a newspaper published in said town, village or city, or if there be no newspaper published in said town, village or city, then by publishing such notice in some other paper published in the county, or by posting said notice in three of the most public places in said town, village or city. Said notice shall contain the date when the same will be heard, which said date shall be not less than thirty days after the first meeting of the board of county commissioners after the filing of said notice, and said publication shall be made, or said notices posed, for not less than twenty days before such petition is acted upon by said board of county commissioners. At the hearing of said petition, if it shall satisfactorily appear to said board of county commissioners that said petition does contain the names, as signers thereto, of a majority of the legal voters of said town, village or city, and that the notice as herein required has been given, then it shall be the duty of said board of county commissioners to forthwith call a special election in said town, village or city for the purpose of submitting to the qualified electors thereof the question of changing the name of such town, village or city. Notice of the time and place of holding said election shall be given in the same manner, and said election shall be conducted in all respects the same, as is provided by law relating to general elections for town and village purposes. The electors at said election shall designate, on their ballots, what name they desire said town, village or city shall take, and the name receiving a two-thirds vote of all the votes cast at said election shall become and remain the name of such town, village or city.

Historical: Laws 1899, 82, Sec. 1;
re-enacting Laws 1890-91, 127, Sec. 1.

Duty of Election Boards.

Sec. 2282. It shall be the duty of the election board conducting such election to certify to the board of county commissioners the tally sheets used at such election, showing the votes cast, and the number of votes cast for each name voted for at such election.

Historical: Laws 1899, 82, Sec. 2;
re-enacting Laws 1890-91, 127, Sec. 2.

Successive Elections.

Sec. 2283. In case no name has received two-thirds of all the votes cast at such election, then said board of county commissioners shall forthwith call another election in the same manner as the first, which said election shall be conducted in the same manner as the first, and the name receiving a majority of the votes cast at such second election, shall become and remain the name of such town, village or city.

Historical: Laws 1899, 82, Sec. 3;
re-enacting Laws 1890-91, 127, Sec. 3.

Order Changing Name.

Sec. 2284. It shall be the duty of the board of county commissioners, upon receiving the tally sheets and returns of such election as provided in Sections 2281 and 2283, to enter upon their record an order changing the name of such town, village or city to the name selected by the voters of such town, village or city at such special election held as herein provided, and to make and file with the board of trustees of such town, village or city, and also with the county recorder of the county, a certified copy of the order made by such board of county commissioners in changing the name of such town, village or city.

Historical: Laws 1899, 82, Sec. 4;
re-enacting Laws 1890-91, 127, Sec. 4.

Expenses of Election: How Paid.

Sec. 2285. The cost and expenses of holding the election or elections, as in this chapter provided, shall be paid by the town, village or city where such election is held.

Historical: Laws 1899, 82, Sec. 5;
re-enacting Laws 1890-91, 127, Sec. 5.

Existing Rights Unaffected.

Sec. 2286. A change of name under the provisions of this chapter shall not in any manner affect or alter any right of action, legal process or property.

Historical: Laws 1899, 82, Sec. 6;
re-enacting Laws 1890-91, 127, Sec. 6.

CHAPTER 10.

CONSOLIDATION OF MUNICIPALITIES.

Section

- 2287. Adjacent cities and towns may consolidate.
- 2288. Resolutions for joint session of city council.

Section

- 2289. Same: Specification of time and place.
- 2290. Officers of joint session.
- 2291. Conduct of session: Quorum.

Section		Section	
2292.	Consolidation ordinance: Formalities and contents.	2297.	Consolidated city to assume debts.
2293.	Same: Definition of boundaries.	2298.	Property vests in consolidated city.
2294.	Journal of proceedings.	2299.	County commissioners to make order of consolidation.
2295.	Application of pre-existing ordinances.		
2296.	Books of smaller city to be turned over.		

Adjacent Cities and Towns May Consolidate.

Sec. 2287. Whenever two cities, towns or villages organized under the laws of this State, which are adjacent to each other, desire to consolidate so as to form one city, town or village, such consolidation may be made under the provisions of this chapter.

Historical: Laws 1899, 359, Sec. 1.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 604.

Resolution for Joint Session of City Councils.

Sec. 2288. The mayor and council of any city, or the chairman and board of trustees of any town or village desiring such consolidation with the adjacent city, town or village may pass a resolution wherein it shall be stated that such city, town or village desires to be consolidated with the adjacent city, town or village, and shall also request the city council or the board of trustees of such adjacent city, town or village, to fix a time for the joint session of the city councils or boards of trustees of the two cities, towns or villages, to pass an ordinance consolidating the same.

Historical: Laws 1899, 359, Sec. 2.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 605.

Same: Specification of Time and Place.

Sec. 2289. The city council or board of trustees of such city, town or village, shall upon the receipt of such resolution, if deemed expedient, pass a resolution specifying the time and place of holding such joint session of the city councils or boards of trustees, of the two cities, towns or villages.

Historical: Laws 1899, 359, Sec. 3.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 606.

Officers of Joint Session.

Sec. 2290. At the time specified for holding such joint session of such city councils or boards of trustees, the said councils or boards of trustees shall meet at the place specified by the resolution fixing the time and place for holding such joint session, and the mayor of the larger city, or chairman of the board of trustees of the larger town or village, shall be president of such session, and the clerk of such city, town or village shall be secretary thereof. In case of absence of either or both of said officers the corresponding officers of the smaller city, town or village shall act as president or secretary, as the case might be. In the absence of both mayors and chairmen or both clerks

the joint session shall elect a president or secretary from the members present.

Historical: Laws 1899, 359, Sec. 4.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 608.

Conduct of Session: Quorum.

Sec. 2291. Said joint session may be adjourned from time to time until the business for which it is assembled is completed. On all preliminary questions a majority of those present and voting shall be sufficient, but on the final passage of the joint ordinance there must be two-thirds of all the councilmen or trustees elect of each city, town or village voting in the affirmative, to give such ordinance validity.

Historical: Laws 1899, 359, Sec. 5.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 609.

Consolidation Ordinance: Formalities and Contents.

Sec. 2292. The joint ordinance shall be signed by the mayors of both cities, or chairmen of both boards of trustees, as the case may be, and attested by the clerks, and shall be published in some newspaper published in one of the two cities, towns or villages proposed to be consolidated for two successive weeks, prior to the time of the taking effect of the ordinance, and such ordinance shall provide some day in the future when such ordinance shall go into effect, such ordinance shall state the terms upon which the consolidation of the two cities, towns or villages shall be effected, and the said joint session shall also adopt a name by which the said consolidated city, town or village shall be known, which name shall be stated in such joint ordinance.

Historical: Laws 1899, 359, Sec. 6.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 610.

Same: Definition of Boundaries.

Sec. 2293. Said joint ordinance shall define the boundaries of such consolidated city, town or village, and for the purpose of making such boundaries regular may include such territory adjacent to such city, town or village as receives or will receive the benefit of the incorporation of such cities, towns or villages: *Provided*, That no city, town or village receiving the benefits of this chapter shall include within its corporate limits more than one-quarter section of land to each two hundred inhabitants.

Historical: Laws 1899, 359, Sec. 7.

Journal of Proceedings.

Sec. 2294. The proceedings of the joint session of the city councils or boards of trustees herein provided for, shall be copied in the journal of the proceedings of the city council or board of trustees of the larger city, town or village, and the joint ordinance shall be recorded in the ordinance book of the larger city, town or village.

Historical: Laws 1899, 359, Sec. 8.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 626.

Application of Pre-Existing Ordinances.

Sec. 2295. All ordinances, rules and regulations of the larger city, town or village shall remain in force and effect over all the territory embraced in such consolidated city, town or village.

Historical: Laws 1899, 359, Sec. 9.

Books of Smaller City to Be Turned Over.

Sec. 2296. All records, papers and documents of the smaller city, town or village in the hands of the clerk of such city, town or village, shall be turned over to the clerk of the consolidated city, town or village, and become the records of such consolidated city, town or village, and the treasurer of such smaller city, town or village shall on demand turn over all money, books, papers, or records in his hands belonging to such smaller city, town or village, to the treasurer of the consolidated city, town or village.

Historical: Laws 1899, 359, Sec. 10.

Comparative Legislation: See Kansas, Gen. Stat. 1901, Sec. 627.

Consolidated City to Assume Debts.

Sec. 2297. All the claims, debts or demands against either of the cities, towns or villages so consolidated shall be assumed and paid by the consolidated city, town or village.

Historical: Laws 1899, 359, Sec. 11.

Property Vests in Consolidated City.

Sec. 2298. All the property of every description, including all debts, claims and demands of every description in favor of either of the cities, towns or villages so consolidated, upon consolidation becomes the property of the consolidated city, town, or village.

Historical: Laws 1899, 359, Sec. 12. | consolidated city," omitted as superfluous.
"Of the consolidation" before "of the

County Commissioners to Make Order of Consolidation.

Sec. 2299. After the passage of such ordinance herein provided for, a true copy of such ordinance shall be filed with the clerk of the board of county commissioners for the county in which such city, town or village is situated, and such board shall, if it appears that the provisions of this chapter have been complied with, make an order that such cities, towns or villages are duly consolidated and incorporated under the name adopted by such joint ordinance, and embracing the territory described in such ordinance. Said board of county commissioners shall also provide for the first election to be held in such consolidated city, town or village which election and the notice thereof shall be the same and conducted in the same manner as other village elections: *Provided*, That the city council or board of trustees of the larger city, town or village shall be deemed the city council or board of trustees of the consolidated city, town or village: *Provided, further*, That if such ordinance is adopted within two months of the biennial election held in the cities, towns and villages of this State, no election need be provided for, but the city council or board of trustees of the larger city, town or village shall be deemed the officers of the

consolidated city, town or village until such biennial election, and the biennial election shall be the first election of such consolidated city, town, or village.

Historical: Laws 1899, 359, Sec. 13.
"Biennial" inserted for "annual" elec-

tion, to conform to Laws 1905, 385,
Sec. 1 (Code Sec. 2245).

CHAPTER 11.

CITY AND VILLAGE PLATS.

Section	Section
2300. Essentials of plats.	2307. Same: Effect.
2301. Certification to plat: Acceptance by municipal authorities.	2308. Same: Enclosure of streets.
2302. Survey: Stakes and monuments.	2309. Same: Duty of county recorder.
2303. Same: Government corners to be shown.	2310. Platting after vacation of prior plat.
2304. Effect of acknowledging and recording plat.	2311. Enforcing execution of plat.
2305. Streets and alleys to be continuous.	2312. Executing plat for purpose of assessment.
2306. Vacation of plat.	2313. Existing plats validated.
	2314. Penalty for selling unplatted lots.

Essentials of Plats.

Sec. 2300. When any owner or proprietor of any tract or parcel of land, wishes to lay out a town site or an addition to any town, village or city or subdivision of out lots, they shall cause the same to be surveyed and a plat thereof made, which shall particularly and accurately describe and set forth all the streets, alleys, commons or public grounds, and all in and out lots or fractional lots within, adjoining or adjacent to said town site or addition, giving the names of streets and width, boundaries and extent of all streets and alleys, and courses of certain lines sufficient to determine the course of all streets and alleys and lot lines. All lots shall be numbered by progressive numbers in each block separately; blocks shall also be numbered. The duty to file for record a plat as provided herein shall attach as a covenant of warranty in all conveyances hereafter made of any lot or lots included in said plat by the original owner or proprietor against any and all assessments, costs and damages paid, lost or incurred by any grantee or person claiming under him in consequence of the omission on the part of said owner or proprietor to file such plat. Description of lots or parcels of land according to the number and designation on said plat in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

Historical: Laws 1893, 97, Sec. 91;
re-enacted Laws 1899, 192, Sec. 95;
amended Laws 1901, 183, Sec. 1.

Certification to Plat: Acceptance by Municipal Authorities.

Sec. 2301. The correctness of said plat must be certified to by the surveyor making the survey, said certificate to contain a correct description of the land included in said plat, and the owner or owners of the land included in said plat, shall also make a certificate containing the correct description of the land with the statement as to their intentions to include the same in the plat, and must also make a deed of

donation of all streets and alleys, shown on said plat, which certificates and deeds shall be acknowledged before some officer duly authorized to take acknowledgments of deeds, and shall be indorsed on the plat and be recorded and form part of the record.

No plat of any townsite, or addition to any town, village or city, or subdivisions of outlots, shall be accepted for record by the recorder of any county unless said plat shall have first been submitted to the city council, board of trustees, or other governing body of the town, village or city to which said town sites, additions, or subdivisions of outlots belong, and to which they are platted as such said town sites, additions, or subdivisions of outlots, and have been accepted and approved by the said city council, board of trustees, or other governing body of said town, village or city; and shall have written thereon the acceptance and approval of the said city council, board of trustees, or other governing body of the town, village or city to which said town sites, additions or subdivisions of outlots belong, and to which they are platted as said townsites, additions or subdivisions of outlots.

Historical: Laws 1893, 97, Sec. 92; | amended Laws 1901, 183, Sec. 2;
re-enacted Laws 1899, 192, Sec. 96; | amended Laws 1905, 70, Sec. 1.

Survey: Stakes and Monuments.

Sec. 2302. In the survey of a town site, addition to any town, village or city or subdivision of outlots, it shall be necessary to drive a stake at each and every corner of each and every lot, or to mark the same in some other good and substantial manner; stakes must be at least two inches square and fourteen inches in length, and driven at least ten inches in the ground; stone monuments must be planted six inches under ground, at different points in said town site or addition and upon the limiting lines of the same, with exact points marked thereon, and must not be over eight hundred feet apart, following the course of streets; said monuments must contain at least five hundred cubic inches, and the exact point where the same are located must be marked on the plat.

Historical: Laws 1901, 183, Sec. 3.

Same: Government Corners to Be Shown.

Sec. 2303. When the land upon which any town site or addition is located has been surveyed by the government, the plat of said town site must show the location of at least three government corners.

Historical: Laws 1901, 183, Sec. 4.

Effect of Acknowledging and Recording Plat.

Sec. 2304. The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use; or as is thereon dedicated to charitable, religious, or educational purposes.

Historical: Laws 1899, 192, Sec. 97;
re-enacting Laws 1893, 97, Sec. 93.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8780.

Cited: Town of Juliaetta v. Smith
(1906) 12 Ida. 288; 85 Pac. 923.

Streets and Alleys to Be Continuous.

Sec. 2305. Streets and alleys laid out in any addition to any city or village shall be continuous with and correspond in directions and width to the streets and alleys of the city or village to which they are an addition.

Historical: Laws 1899, 192, Sec. 98;
re-enacting Laws 1893, 97, Sec. 94.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8781.

Vacation of Plat.

Sec. 2306. Any such plat may be vacated by the proprietors thereof at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated; and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out or described in such plat, and in cases where any lots have been sold the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

Historical: Laws 1899, 192, Sec. 99;
re-enacting Laws 1893, 97, Sec. 95.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8782.

Same: Effect.

Sec. 2307. Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter: *Provided*, Such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat; and, *Provided further*, That nothing contained in this section shall authorize the closing or obstruction of any public highways laid out according to law.

Historical: Laws 1899, 192, Sec. 100;
re-enacting Laws 1893, 97, Sec. 96.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8783.

Same: Enclosure of Streets.

Sec. 2308. When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may enclose the streets, alleys and public grounds adjoining said lots in equal proportions.

Historical: Laws 1899, 192, Sec.
101; re-enacting Laws 1893, 97, Sec.
97.

Comparative Legislation: See Neb.
Cobbey's an. Stat. Vol. 2, Sec. 8784.

Same: Duty of County Recorder.

Sec. 2309. The county recorder in whose office the plats aforesaid are recorded, shall write in plain, legible letters, across that part of said plat so vacated, the word "vacated", and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

Historical: Laws 1899, 192, Sec. 102;
re-enacting Laws 1893, 97, Sec. 98.

Comparative Legislation: See Neb.
Cobbey's An. Stat. Vol. 2, Sec. 8785.

Platting After Vacation of Prior Plat.

Sec. 2310. The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor; and

when such plat is acknowledged by such owner, and is recorded in the recorder's office of the county, such lots may be conveyed and assessed by the numbers given them on such plats.

Historical: Laws 1899, 192, Sec. 103; re-enacting Laws 1893, 97, Sec. 99.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8786.

Enforcing Execution of Plat.

Sec. 2311. Whenever the original owners or proprietors of any subdivision of land, as contemplated in Section 2300, have sold or conveyed any part thereof, or invested the public with any rights therein, and have failed and neglected to execute and file for record a plat as provided in Section 2300, the county recorder shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of such plat as provided; and if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat for thirty days after the issuance of such notice, the recorder shall cause to be made the plat of such subdivision, and any surveying necessary therefor. Said plat shall be signed and acknowledged by the recorder, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record, and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged and recorded, by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the recorder laid before the first session of the county board, who shall allow the same, and order the same to be paid out of the county treasury, and who shall, at the same time, assess the same amount pro rata upon all several subdivisions of said tract, lot or parcel so subdivided; and said assessment shall be collected with, and in like manner as, the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county, before any court having jurisdiction, to recover of the said original owners or proprietors, or either of them, said cost and expense of procuring and recording said plat.

Historical: Laws 1899, 192, Sec. 104; re-enacting Laws 1893, 97, Sec. 100. Section ("2300" for Section "97". Sec. 97 is Sec. 2304, but the subject matter referred to is found in Sec. 2300.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8787

Executing Plat for Purpose of Assessment.

Sec. 2312. Whenever any Congressional subdivision of land of forty acres or less, or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof, cannot, in the judgment of the county tax collector, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, the tax collector shall cause and require to be made and recorded a plat of such tract or lot of land with its several subdivisions, in accordance with the provisions of this chapter; and he shall proceed in such cases according to the provisions of the preceding section, and all the provisions of said section in relation to plats of cities and villages, and so forth, shall govern as to the tracts and parcels of land in this section referred to.

Historical: Laws 1899, 192, Sec. 105; re-enacting Laws 1893, 97, Sec. 101. The reference in the original section is to the following instead of to the preceding section, but it is apparently a mistake. The Nebraska statute refers to the preceding section. See the note to Cobbey Sec. 8788.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8788.

Existing Plats Validated.

Sec. 2313. None of the provisions of this chapter shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared valid, notwithstanding irregularities and omissions in manner of form of acknowledgment or certificate; but the provisions of this section shall not affect any action or proceeding now pending.

Historical: Laws 1899, 192, Sec. 106; re-enacting Laws 1893, 97, Sec. 102.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8789.

Penalty for Selling Unplatted Lots.

Sec. 2314. Any person who shall dispose of, or offer for sale or lease, any lots in any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of a lot sold or disposed of, leased or offered for sale.

Historical: Laws 1899, 192, Sec. 107; re-enacting Laws 1893, 97, Sec. 103.

Comparative Legislation: See Neb. Cobbey's An. Stat. Vol. 2, Sec. 8790.

CHAPTER 12.

MUNICIPAL IMPROVEMENT BONDS.

Section	Section
2315. Purposes for which bonds may be issued.	2319. Issue and sale of bonds.
2316. Bond ordinance and election.	2320. Tax levy for interest and sinking fund.
2317. Denomination, interest and maturity of bonds.	2321. Use of proceeds: Duties of officers.
2318. Interest coupons and form of bond.	2322. Power to collect tax: Refunding bonds.

Purposes for Which Bonds May Be Issued.

Sec. 2315. Every city or town incorporated under the laws of the Territory of Idaho, or of the State of Idaho, shall have power and authority to issue municipal coupon bonds, not to exceed at any time in the aggregate fifteen per cent of the real estate value of said city or town according to the assessment of the preceding year, for any or all of the following purposes:

1. To provide for the construction and maintenance of necessary water works and supplying the same with water, and to provide lights for streets, public buildings and grounds.
2. To provide for the laying, constructing, equipment and maintenance of sewers and drains.
3. To provide for the grading, paving, construction and laying out of streets and alleys.
4. To provide for the funding, refunding, purchase and redemption of the outstanding indebtedness of such city or town.

5. To provide for the establishment and maintenance of hospitals, pest houses, and cemeteries, either within or without the corporate limits of such city or town.

6. To provide for the purchase, improvement, equipment and maintenance of lands for the use of public parks, either within or without the corporate limits of such city or town.

7. To provide for the purchase, erection, construction, and furnishing of public buildings and building sites for the use of such city or town.

8. To provide for the establishment, equipment and maintenance of a fire department and for the purchase of suitable and necessary apparatus and buildings and building sites for the use thereof and for all other necessary public improvements.

Bonds may be issued under the fourth subdivision of this section for the purpose of funding, refunding, purchase or redemption of the outstanding indebtedness of any such city or town, when the same can be done to the profit and benefit of such city or town and without incurring any additional liability, without the submission of the question of the issuance of such bonds to the electors of the city or town.

Historical: Laws 1899, 29, Secs. 1, 8; re-enacting Laws 1890-91, 53, Secs. 1, 8; amended Laws 1893, 34, Sec. 1. The concluding paragraph is Sec. 8.

Cited: *Wiggin v. City of Lewiston* (1902) 8 Ida. 527; 69 Pac. 286; *Jack v. Village of Grangeville* (1903) 9 Ida. 291; 74 Pac. 969.

Definition: The words "town" and "village" are used in the statutes synonymously, and a granting of powers to towns to issue municipal coupon bonds includes villages. *Brown v. Village of Grangeville* (1902) 8 Ida. 784; 71 Pac. 151.

Bond Ordinance and Election.

Sec. 2316. Whenever the common council of such city or the trustees of such town, or other legislative body of any such city or town, shall deem it advisable to issue the coupon bonds of such city or town for any of the purposes aforesaid, the mayor and common council of such city or the trustees of such town shall provide therefor by ordinance, which shall specify the purpose of issuing such proposed bonds; if it is to create a new debt, the object thereof must be stated, or, if it is to fund or refund any existing indebtedness, it must be described; and, when it consists of warrants or other securities, they must be described by giving their number, date and amount and the fund out of which the same, according to the terms thereof, are payable; and the ordinance shall declare the purpose and the total amount for which such bonds shall be issued and designate the provisions to be made to pay the interest on such bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of the issuance of the same, and shall also provide for the holding of an election of the qualified electors who are taxpayers of such city or town, of which thirty days' notice, to be provided for in such ordinance, shall be given in a newspaper of such city or town designated in said ordinance. Such election shall be conducted as other city elections. The voting at such election must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Ordinance No.,"

and "Against issuing bonds to the amount of dollars for the purpose stated in Ordinance No....."

If at such election held as provided for in this chapter, two-thirds of the qualified electors, who are taxpayers in such city or town, voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds for said purpose shall be issued in the manner hereinafter provided.

Historical: Laws 1899, 29, Sec. 2; re-enacting Laws 1890-91, 53, Sec. 2; amended Laws 1895, 70, Sec. 1.

Sufficiency of Ordinance: The provision of this section which requires the bonding ordinance to specify the purpose of issuing the proposed bonds, is not complied with by an ordinance stating the purpose of the bonds to be "to fund the outstanding indebtedness of said city." *Coffin v. Richards* (1899) 6 Ida. 741; 59 Pac. 562.

Sufficiency of Notice: Where the

mayor publishes a proclamation for a period of more than thirty days in a newspaper published in the city, giving the time and place when an election will be held to vote upon a proposition to issue bonds for municipal improvement, there is a sufficient compliance with this section. *Sommercamp v. Kelly* (1902) 8 Ida. 712; 71 Pac. 147.

Sufficiency of Ballot: A ballot in the exact language of this section is sufficient. *Brown v. Village of Grangeville* (1902) 8 Ida. 784; 71 Pac. 151.

Denomination, Interest and Maturity of Bonds.

Sec. 2317. Said bonds shall be known as municipal coupon bonds of (name of city or town, county and State) and shall be issued as near as practicable in denominations of one thousand dollars each, but bonds of the denomination of five hundred or one hundred dollars may be issued when necessary, and each bond shall be made payable within twenty years from the date of its issuance. Said bonds must bear interest at a rate not exceeding six per centum per annum, to be paid on the first day of January and first day of July in each year at the office of the city or town treasurer, or at such banking house or trust company in the City of New York as may be designated by the mayor and common council of the city or trustees of the town issuing such bonds, at the option of the holder thereof. Such bonds shall be redeemable at the pleasure of the city or town at any time after the expiration of ten years from the date of the issuance, and each bond must be redeemed in the order it is numbered.

Historical: Laws 1899, 29, Sec. 3; re-enacting Laws 1890-91, 53, Sec. 3; amended Laws 1895, 70, Sec. 1.

Interest Coupons and Form of Bonds.

Sec. 2318. The bonds mentioned in the preceding section must have attached to each bond, when negotiated, semi-annual interest coupons covering the interest expressed in the bond from the date of issue until paid. Such bonds must be signed by the mayor or chairman of the board of trustees and attested by the city or town clerk, and bear the city or town seal, and be countersigned by the city or town treasurer, and the coupons attached to such bonds must be signed by the city or town treasurer. Each coupon must have annexed to the same a number corresponding with the number of the bond, and each bond must state upon its face the amount for which the same is issued, the date of issue, and be made payable to or bearer, and must also recite that it is issued in conformity with the provisions of this chapter.

Historical: Laws 1899, 29, Sec. 4;
re-enacting Laws 1890-91, 53, Sec. 4;
amended Laws 1895, 70, Sec. 1.

Issue and Sale of Bonds.

Sec. 2319. The said mayor and common council or board of trustees must give notice by publication in some newspaper published in the city or town—if in a weekly paper, in four issues thereof; if in any other paper, for four weeks—of its intention to issue and negotiate such bonds, and invite bidders therefor, and, after ascertaining the best terms upon, and the lowest interest at, which such bonds can be negotiated, must secure the proper engraving or printing thereof, and thereafter must have them consecutively numbered and otherwise properly prepared and executed; and, when so executed, they must each be registered by the city or town clerk in a public record book to be kept for that purpose, and therein must be stated the number, date, amount of each bond, time and place of payment, rate of interest, number of coupons attached, and any other proper description thereof for future identification. Then said mayor and common council or trustees must from time to time, in such amounts as they may deem best, deliver said bonds to the city or town treasurer and take and file his receipt therefor, and charge him with all bonds so delivered; and any duties required of said mayor and common council or trustees by virtue of this chapter, may be performed at any general, special or called meeting thereof. The city or town treasurer must, under the general supervision of said mayor and common council or trustees, sell said bonds for cash, and in no case must said bonds be sold for less than their face, or par value, and the accrued interest at time of disposal. All proceeds derived from sale of said bonds must be applied exclusively to the purpose for which said bonds are issued. Said city or town treasurer must keep a record of all bonds disposed of, showing their number, rate of interest, date and amount of sale, and when and where payable, which record he must keep open for the inspection of the public at all reasonable office hours; and he must make such detailed statements to, and as often as required by, said mayor and common council or trustees, of all of his transactions under the provisions of this chapter.

Historical: Laws 1899, 29, Sec. 5;
re-enacting Laws 1890-91, 53, Sec. 5;
amended Laws 1895, 70, Sec. 1.

Tax Levy for Interest and Sinking Fund.

Sec. 2320. The mayor and common council or trustees must, in accordance with the provisions designated to be made for the collection of an annual tax sufficient to pay the interest on such bonds as it falls due, and to create and constitute a sinking fund for the payment of the principal of said bonds as they respectively become due, cause to be levied annually upon all the taxable property within said city or town, in addition to the authorized taxes, a sufficient sum to pay said interest, and must, in time to provide means for the payment of said bonds as they become due, cause to be levied a sufficient additional sum to pay said bonds at maturity; and all such taxes must be levied, assessed and collected as other city or town taxes, until the bonds so issued are fully paid, including the interest thereon.

The faith, credit and all taxable property within said city or town are, and must continue, pledged, and the proper officers of the city or town must continue to assess and collect, on all taxable property within the limits thereof, the necessary taxes to pay said bonds and interest thereon as the same becomes due. Should the tax for the payment of interest on any bonds issued under the provisions of this chapter, at any time, not be levied or collected in time to meet such payment, the interest must be paid out of any moneys in the city or town general or expense fund, and the money so used for such payment of interest must be repaid to the fund from which so taken out of the first moneys collected from taxes.

Historical: Laws 1899, 29, Sec. 6;
re-enacting Laws 1890-91, 53, Sec. 6;
amended Laws 1895, 70, Sec. 1.

Use of Proceeds: Duties of Officers.

Sec. 2321. It shall be the duty of the city or town treasurer to use the proceeds arising from the sale of said bonds in payment of the indebtedness described in said ordinance only. And it shall be the duty of the city or town officials to levy, collect and apply the tax herein provided for to the payment of interest and redemption of the principal of the bonds in the manner specified, and for no other purpose, and any failure to comply with the provisions of this chapter, by the proper officers, or any neglect or refusal to levy and collect any such tax as aforesaid, shall be deemed a misdemeanor, and any city or town official guilty of the same shall, upon conviction, be fined in an amount equal to the sum that should have been levied; or for any misappropriation he shall be fined in an amount equal to the sum misappropriated, and imprisoned in the city or town jail not exceeding six months.

Historical: Laws 1899, 29, Sec. 7;
re-enacting Laws 1890-91, 53, Sec. 7;
amended Laws 1895, 70, Sec. 1.

Power to Collect Tax: Refunding Bonds.

Sec. 2322. Every city whose mayor and common council, and every town whose trustees have authorized the issue of bonds for any one or more of the purposes specified in this chapter, is hereby authorized to make provision for the collection of an annual tax sufficient to pay the interest on such bonds as falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same; and in any case where such provision has not been designated, or an insufficient provision has been designated, in the resolution of the mayor and common council of such city or of the trustees of such town which is provided for in Section 2316, such sufficient provision may be, and the same is, hereby authorized to be made by such mayor and common council or such trustees by an ordinance duly passed, and such provision by such ordinance shall be deemed and held to be a full and complete compliance with all the provisions of this chapter, and with all other laws which require such provision to be made or designated; and in case any such bonds authorized as aforesaid have, by any city or town, been sold for value and the purchase price

thereof at not less than par has been paid to and received by such city or town, the common council or trustees thereof may, by ordinance duly passed, ordain and provide that upon the surrender of such bonds by the holder of holders thereof, new bonds in the place thereof shall be issued and delivered to such holder or holders: *Provided*, That such new bonds shall not be for any greater sum or rate of interest than the bonds so surrendered, and the bonds so surrendered shall thereupon be immediately cancelled, and the new bonds thus issued in place thereof shall be the valid and binding obligations of the city or town so issuing the same.

Historical: Laws 1899, 29, Sec. 9;
re-enacting Laws 1893, 130, Sec. 1.

CHAPTER 13.

STREET IMPROVEMENT BONDS.

Section	Section
2323. Application of chapter.	2333. Sale of bonds.
2324. Contract for improvement to be let.	2334. Proceeds of sale: Use and account.
2325. Letting of contracts: Advertising for bids.	2335. Assessment of cost of improvement.
2326. Contractor to give bond.	2336. Same: Plat and schedule.
2327. City engineer to furnish grades.	2337. Certification to assessor: Installment payments.
2328. Petition or three-fourths vote necessary.	2338. Assessment constitutes a lien.
2329. City may issue bonds.	2339. Appropriation of assessment money.
2330. Bond election.	2340. Mistakes do not vitiate lien.
2331. Denomination of bonds: Installment coupons.	2341. Improvement of part of street.
2332. Signature and formalities of bonds.	

Application of Chapter.

Sec. 2323. All incorporated cities of this State, except cities organized or incorporated under special or local laws of Idaho, in which at the last preceding city election held prior to the filing of the petition, or the casting of the vote of the members of the city council, mentioned in Section 2328, there were cast seven hundred, or more, votes for mayor, shall have the powers and be subject to all the provisions of this chapter; and this chapter shall be applicable only to all such cities organized or incorporated under general laws of this State, and shall not be applicable to incorporated cities organized or incorporated under special or local laws of Idaho.

Historical: Laws 1895, 41, Sec. 1;
re-enacted Laws 1899, 244, Sec. 1;
amended Laws 1907, 5, Sec. 1.

Contract for Improvement to Be Let.

Sec. 2324. When the council of any such city shall direct the paving or curbing of, or the construction of sidewalks on, any street or streets, they shall make and enter into a contract for furnishing materials and for the paving or curbing or construction of sidewalks, as the case may be, of such street or streets, either for the entire work in one contract, or parts thereof in separate and specified sec-

tions, as to them may seem best: *Provided*, That no work shall be done under any such contract until a certified copy thereof shall have been filed in the office of the city clerk.

Historical: Laws 1899, 244, Sec. 2;
re-enacting Laws 1895, 41, Sec. 2.

Letting of Contracts: Advertising for Bids.

Sec. 2325. All such contracts shall be made by the council in the name of the city upon such terms of payment as shall be fixed by the council, and shall be made with the lowest and best bidder upon sealed proposals, after public notice for not less than three weeks, in at least two newspapers of said city, which notice shall contain a description of the kind and amount of work to be done and material to be furnished as nearly accurate as practicable.

Historical: Laws 1899, 244, Sec. 3;
re-enacting Laws 1895, 41, Sec. 3.

Contractor to Give Bond.

Sec. 2326. Each contractor shall be required to give a bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, and the council shall have power to institute suit in the name of the city to enforce all such contracts.

Historical: Laws 1899, 244, Sec. 4;
re-enacting Laws 1895, 41, Sec. 4.

City Engineer to Furnish Grades.

Sec. 2327. It shall be the duty of the city engineer to furnish the council with proper grades and lines and see that the work is done in accordance with the ordinances and regulations of the city with respect to said grades and lines.

Historical: Laws 1899, 244, Sec. 5;
re-enacting Laws 1895, 41, Sec. 5.

Petition or Three-Fourths Vote Necessary.

Sec. 2328. The council of any such city shall not have the right to authorize any improvement under this chapter unless the owners of two-thirds of the feet front of the property abutting upon the street or streets to be improved shall first petition therefor, or unless the same shall be voted for by three-fourths of the members of the council.

Historical: Laws 1899, 244, Sec. 6;
re-enacting Laws 1895, 41, Sec. 6.

City May Issue Bonds.

Sec. 2329. For the purpose of paying the costs and expenses incurred in making the improvements provided for in this chapter, or either or any thereof, such city is empowered to issue bonds and sell the same in the manner in this chapter provided.

Historical: Laws 1899, 244, Sec. 7;
re-enacting Laws 1895, 41, Sec. 7.

Bond Election.

Sec. 2330. Before any such bonds are issued, the mayor and com-

mon council of such city must, by resolution passed at a regular meeting, declare the purpose or purposes for which such bonds are to be issued, and the total amount. They must also, by ordinance, provide for the holding of a special election of the qualified voters of such city, which shall be conducted as other city elections, at which election there shall be submitted to such electors the question of issuing such bonds for the purpose named in such resolution. The voting at such election must be by ballot, on which ballot must be written or printed: "For bonds and debt (here separately naming the purpose or purposes for which said bonds shall be issued and said debt incurred)," or "Against bonds and debt (here separately naming the purpose or purposes for which such bonds shall be issued and such debt incurred)." If it shall appear upon a canvass of such ballots that two-thirds of such qualified voters voting at such election assent to the issuing of such bonds and the incurring of the indebtedness thereby created for any one or more of the purposes named in such resolution, such bonds for said purpose or purposes shall be issued in the manner in this chapter provided.

Historical: Laws 1899, 244, Sec. 8;
re-enacting Laws 1895, 41, Sec. 8.

Denomination of Bonds: Installment Coupons.

Sec. 2331. Said bonds shall be known as municipal improvement coupon bonds of (name city, county and State) and shall be issued as near as practicable in denominations of five hundred dollars each, but bonds of the denomination of one hundred dollars may be issued when necessary, and each bond shall be payable in seven years from the date of its issuance, to which must be attached seven coupons maturing and payable and for the amounts as follows: The first coupon shall be payable one year from the date of the issuance of the bond in an amount equal to one-seventh of the principal of the bond with interest on the total amount of the bond for one year; the second coupon shall be payable in two years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of the bond with interest on six-sevenths of the principal of said bond for a period of one year; the third coupon shall be payable in three years from the date of issuance of said bond in an amount equal to one-seventh of the principal of the bond with interest on five-sevenths of the principal of said bond for one year; the fourth coupon shall be payable in four years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of said bond with interest on four-sevenths of the principal of said bond for one year; the fifth coupon shall be payable in five years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of said bond with interest on three-sevenths of the principal of said bond for one year; the sixth coupon shall be payable in six years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of the bond with interest on two-sevenths of the principal of said bond for one year; and the seventh coupon shall be payable in seven years from the date of the issuance of said bond in an amount equal to one-seventh of the principal of said bond with interest on one-seventh of the principal of said bond for one year. Upon the payment of

the seventh coupon, as above provided, said bond shall become null and void. The rate of interest must not exceed seven per cent per annum.

Historical: Laws 1899, 244, Sec. 9;
re-enacting Laws 1895, 41, Sec. 9.

Signature and Formalities of Bonds.

Sec. 2332. The bonds mentioned in the preceding section must be signed by the mayor and attested by the city clerk and bear the city seal and be countersigned by the city treasurer, and the coupons attached to such bonds must be signed by the city treasurer. Each coupon must have annexed to the same a number corresponding with the number of the bond, and each bond must state upon its face the amount for which the same is issued, to whom issued and the date of issue, and must also recite that it is issued in conformity with the provisions of this chapter.

Historical: Laws 1899, 244, Sec. 10;
re-enacting Laws 1895, 41, Sec. 10.

Sale of Bonds.

Sec. 2333. The said mayor and common council must give three weeks' notice by publication in some newspaper published in such city, of its intention to issue and negotiate such bonds, and invite bidders therefor, and after ascertaining the best terms upon, and the lowest interest at, which such bonds can be negotiated, must secure the proper engraving and printing thereof, and must thereafter have them consecutively numbered and otherwise properly prepared and executed; and when so executed, they must be by the city clerk registered in a public record book to be kept for that purpose, and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached, and any other proper description thereof for future identification. Then said mayor and common council must, from time to time, in such amounts as they may deem best, deliver said bonds to the city treasurer and take and file his receipt therefor, and charge him with all bonds so delivered; and any duties required of said mayor and common council by virtue of this chapter may be performed at any general, special or called meeting thereof. The city treasurer must, under the general supervision of said mayor and common council, sell said bonds for cash, and in no case must said bonds be sold for less than the face or par value and the accrued interest at the time of disposal. All proceeds derived from the sale of said bonds must be applied exclusively to the purposes for which said bonds are issued. And in no case must any more of said proceeds be expended for any one purpose than the amount named in the resolution of said mayor and common council above mentioned. Said city treasurer must keep a record of all bonds disposed of by him, showing their number, rate of interest, date and amount of sale, and when, where and to whom payable, which record he must keep open for the inspection of the public at all reasonable office hours, and he must make such detailed statements to, and as often as required by, said mayor and common council of all of his transactions under the provisions of this chapter. Should the tax for the payment of interest and installment of princi-

pal on any of the bonds issued under the provisions of this chapter at any time not be collected in time to meet such payment, the interest and such installments must be paid out of any moneys in the city general or expense fund, and the moneys so used for such payment must be repaid to the fund from which so taken out of the first moneys collected from the assessments in this chapter provided.

Historical: Laws 1899, 244, Sec. 11;
re-enacting Laws 1895, 41, Sec. 11.

Proceeds of Sale: Use and Account.

Sec. 2334. All moneys received by the city treasurer from the sale of said bonds, shall be kept by him in a separate fund and paid out on requisition of the council, accompanied by affidavit of the city engineer, that work has been done or material furnished to the amount of said requisition, and that it is required for payment of the same, and all moneys received by said treasurer shall be kept in the same manner, and subject to the regulations, regarding other money of the city, except that he shall keep a separate account of the same, and all interest received upon the same shall be credited to such fund.

Historical: Laws 1899, 244, Sec. 12;
re-enacting Laws 1895, 41, Sec. 12.

Assessment of Costs of Improvement.

Sec. 2335. When any such improvement shall have been completed, it shall be the duty of the council to ascertain the entire amount of the bonds sold, and the interest thereon to the date of completion, which shall be taken to be the cost of such improvement, and such costs shall then be assessed as shall be provided by law or by ordinance of such city, upon the property fronting or abutting upon such improvement: *Provided*, Nothing in this chapter shall be construed as authorizing the assessment of any such cost on property belonging to the State.

Historical: Laws 1899, 244, Sec. 13;
re-enacting Laws 1895, 41, Sec. 13.

Same: Plat and Schedule.

Sec. 2336. The council shall cause a plat to be made of the street or streets on which any such improvement shall be made, showing the separate lots of ground, and the names of the several owners, and shall make or cause to be made a list or schedule of the names of all such owners, and the amount assessed against each lot or piece of ground, and shall give two weeks' public notice in two newspapers in the city, and by hand bills posted in conspicuous places, on the line of such street or streets, of the time and place where, for the period of twenty days thereafter, the same may be seen for the correction of errors, and after having corrected such errors as may be made known to them, they shall file the same in the office of the city clerk.

Historical: Laws 1899, 244, Sec. 14;
re-enacting Laws 1895, 41, Sec. 14.

Certification to Assessor: Installment Payments.

Sec. 2337. Said assessment shall be certified by the mayor of the

city and attested by the city clerk and delivered to the county assessor who shall place the same upon the city assessment roll, and said assessment shall be payable at the office of the city tax collector in seven equal installments, with interest at seven per cent per annum from the date of the assessment upon the unpaid portion thereof, the first of which, with interest on the whole amount at seven per cent, shall be payable at the first annual payment of taxes next succeeding the time said assessment is placed upon the tax roll, and the others annually thereafter, and said assessment shall be collected in the same manner as other city taxes.

Historical: Laws 1899, 244, Sec. 15;
re-enacting Laws 1895, 41, Sec. 15.

Assessment Constitutes a Lien.

Sec. 2338. Said assessments, with interest accruing thereon, shall be a lien upon the property abutting upon the street or streets on which any such improvement is made, from the commencement of the work, and shall remain a lien until fully paid and shall have precedence over all other liens excepting ordinary taxes, and shall not be divested by any judicial sale: *Provided*, That such lien shall be limited to the lots abounding or abutting on such street or streets, and not exceeding in depth therefrom one hundred and fifty feet.

Historical: Laws 1899, 244, Sec. 16;
re-enacting Laws 1895, 41, Sec. 16.

Appropriation of Assessment Money.

Sec. 2339. All moneys received from assessments shall be appropriated to the payment of the interest and redemption or payment of the bonds that shall be issued for said improvements, and if any interest shall become due on any of said bonds, when there are no funds from which to pay the same, the council shall be authorized to make a temporary loan for the payment thereof.

Historical: Laws 1899, 244, Sec. 17;
re-enacting Laws 1895, 41, Sec. 17.

Mistakes Do Not Vitate Lien.

Sec. 2340. Any mistake in the description of the property or in the name of the owner shall not vitiate the lien.

Historical: Laws 1899, 244, Sec. 18;
re-enacting Laws 1895, 41, Sec. 18.

Improvement of Part of Street.

Sec. 2341. Any part or section of any street may be improved under this chapter as well as an entire street.

Historical: Laws 1899, 244, Sec. 19;
re-enacting Laws 1895, 41, Sec. 19.

CHAPTER 14.
SEWER CONSTRUCTION BONDS.

Section	Section
2342. Cities may construct sewerage system.	2344. Chairman and clerk.
2343. Sewer committee.	2345. Treasurer.
	2346. Duties of officers.

Section

- 2347. Vacancies: Quorum.
- 2348. Duties of chairman.
- 2349. Duties of clerk.
- 2350. Committee to employ assistants.
- 2351. Powers of committee.
- 2352. Meetings.
- 2353. Assessment and bond issue.
- 2354. Committee to supervise construction work.

Section

- 2355. Committee to turn over system.
- 2356. Maps and plans to be kept.
- 2357. Quarterly statements of committee.
- 2358. Regulation of system by city.
- 2359. Same: Powers of city.
- 2360. Validating prior assessments and bonds.

Note: The act contained in this chapter supersedes a prior similar act on the same subject: See Laws 1903, 26.

Cities May Construct Sewerage System.

Sec. 2342. In addition to the powers heretofore granted to cities, towns or villages under the provisions of the laws of the State of Idaho now in force, cities, towns or villages may by ordinances by-laws, and under and by virtue of this chapter: Construct, build or purchase, keep, conduct and maintain a sewer system or sewerage disposal works therein, or elsewhere, of the character and keeping sufficient to furnish the inhabitants thereof, as well as the places and people along and in the vicinity of the lines of pipes, conduits or aqueducts constructed or used for such purposes, with a sewer system and sewerage disposal works sufficient for all uses and purposes necessary for the comfort, convenience, health and well being of said city, town or village, and to that end may acquire by purchase, gift, condemnation or otherwise, to own and possess such real or personal property within and without the limits of the city, town or village, as, in the judgment of the persons herein authorized to construct, purchase, conduct and maintain a sewer system and sewerage disposal works, may be deemed necessary and convenient. And for that purpose they may level a special assessment on the lots and parcels of land fronting on any highway, street or alley that may be included within any of the sewer system, or sewerage disposal works, district or districts, as well as on all lots or parcels of land situated therein, except as hereinafter provided, to pay the expenses thereof. Such cities, towns or villages may establish sewer districts in conformity to the requirements of the topography of the ground; and construct in each of said districts a main or trunk sewer; and such districts shall include real estate which can be conveniently sewered or drained in such main or trunk sewer, and which will be benefited thereby. They may, from time to time, establish, in connection with such main or trunk sewer, lateral sewer district or districts, and construct and maintain therein lateral sewers connecting and draining, directly or indirectly, into such main or sub-sewer. But unless a majority of the resident owners of the property subject to assessment for such sewerage system or sewerage disposal works and improvements, shall petition the council or trustees to make the same or have the same constructed, such improvements shall not be made unless three-fourths of all the members of such city council or trustees shall, by an affirmative vote, at a regular meeting, assent to and order the same.

Sewer Committee.

Sec. 2343. The power and authority given by the preceding section hereof to construct and operate a sewer system and sewerage disposal works, and levy a special assessment therefor and issue and dispose of special improvement bonds therefor, shall be exercised as hereinafter provided by three substantial taxpayers and bona fide residents of such city, town or village, who shall be styled collectively the "sewer committee," and are hereinafter mentioned and referred to as the "committee." Such committee shall be appointed by the mayor of cities, or by the chairman of the board of trustees of towns and villages, and upon appointment shall hold office as follows: One for one year next ensuing after his appointment, and until his successor is appointed and qualified; one for two years next ensuing his appointment, and until his successor is appointed and qualified; and one for three years next ensuing his appointment, and until his successor is appointed and qualified. Such committee shall receive only such compensation as is fixed by the council or trustees, as the case may be, which compensation shall be in full for all duties performed or connected with their office. Upon the completion of any work or contract or contracts made or entered into during the life of said committee, and upon the turning over of such work to the council or trustees, in that event the said committee shall become null and void and of no further force and effect: *Provided, however,* That at any time thereafter, when the necessity exists, a further committee may be appointed, as hereinbefore stated, who shall have the same powers and duties, and shall all the time remain under the provisions of this chapter and of such ordinances as may be passed by said city, town or village.

Historical: Laws 1905, 334, Sec. 2.

Chairman and Clerk.

Sec. 2344. The sewer committee at their pleasure shall elect a president as a presiding officer of their number, who shall be styled chairman of the committee, and they shall also elect a clerk, who shall be the city or village clerk, who shall be styled the clerk of the committee.

Historical: Laws 1905, 334, Sec. 3.

Treasurer.

Sec. 2345. The committee shall appoint a treasurer, who shall be the city or town treasurer, who shall give a bond in such additional sum over and above his official bond, as may be required, and who shall have the care and custody of all money of the committee from collections, or special assessments, or the sale of special improvement bonds, or otherwise, for the construction of a sewer system or sewerage disposal works as herein provided, and who shall pay out moneys received under the provisions of this chapter, on the order of the chairman, countersigned by the clerk of the committee, and not otherwise.

Historical: Laws 1905, 334, Sec. 4.

Duties of Officers.

Sec. 2346. The chairman, clerk, and treasurer, aforesaid, shall also perform all such acts and duties as required of them, or either of them, by the committee or this chapter or any ordinance passed in furtherance of this chapter. The chairman shall hold his office at the pleasure of the committee.

Historical: Laws 1905, 334, Sec. 5.

Vacancies: Quorum.

Sec. 2347. The mayor of the city, or the chairman of the town or village trustees, as the case may be, shall fill vacancies on the sewer committee, as they may occur by death, resignation, removal from the city or village, or expiration of term, by the appointment of persons to be members thereof, who are bona fide residents and taxpayers of such city, town or village. Two of the committee shall constitute a quorum for the transaction of all business.

Historical: Laws 1905, 334, Sec. 6.
"Trustees" inserted after "village",
line 2. and "or expiration of term"

transposed from its original position
following "removal" to express the
sense.

Duties of Chairman.

Sec. 2348. The chairman of the committee shall execute all written contracts on behalf thereof, and sign all orders for the payment of money authorized thereby.

Historical: Laws 1905, 334, Sec. 7.

Duties of Clerk.

Sec. 2349. The clerk of the committee is its clerical officer and shall keep a fair minute of all its acts, and duly countersign all orders authorized by it and signed by the chairman on its behalf, keep its accounts and have the custody of its books and papers.

Historical: Laws 1905, 334, Sec. 8.

Committee to Employ Assistants.

Sec. 2350. The committee may also from time to time hire, employ and discharge an engineer or engineers, surveyor or surveyors, consulting engineer or engineers, draftsman, or consulting surveyor or surveyors, as well as such other agents, workmen, laborers and servants, at such compensation or wages as the committee may deem necessary or convenient, for the accomplishment of the purposes of this chapter.

Historical: Laws 1905, 334, Sec. 9.

Powers of Committee.

Sec. 2351. The committee has power and authority:

1. To employ, hire and discharge from time to time all such agents, workmen, laborers or servants as may be deemed necessary in the conduct, operation and management of the city sewer system and sewerage disposal works.

2. To make all needful rules and regulations for the conduct and management of the same for the said city and inhabitants thereof.

3. To do any other act, and to make any other regulation, necessary and convenient for the conduct of its business and the due execution of the power and authority given it by this chapter, or by ordinances not contrary to law.

Historical: Laws 1905, 334, Sec. 10.

Meetings.

Sec. 2352. The committee shall meet in the city or village, for the transaction of such business as it may deem proper, at least once a month, and at such other time as it may provide.

Historical: Laws 1905, 334, Sec. 11.

Assessment and Bond Issue.

Sec. 2353. Assessments made under Subdivision 1 of this section shall be made, assessed and collected in the following manner:

1. The assessment as well as all costs of any sewerage work, or sewerage disposal works, or improvements provided for in Section 2342, shall be assessed upon all the lots or parcels of land fronting on all highways, streets or alleys included within any sewerage improvement district, as well as all lots or parcels of land situated therein, each lot or parcel of land being separately assessed for the full debt thereof in proportion to the benefits to the property to be benefited, sufficient to cover the total expense of such work, or the construction of such sewer and sewerage disposal works: *Provided, however,* That such assessments shall not include the property occupied by the streets, cross streets and alleys.

2. When any work or improvement mentioned in this chapter is done or made so that the boundary line of the sewerage district, within which such work or improvement is being carried on, shall cross along the center line of any alley, street or public way, within said town, city or village, the lots fronting along that side of said street, alley or public way within said district only shall be assessed to cover the expense of such work according to the provisions of said chapter.

3. The city council or trustees shall before or during the construction of the sewerage system, or sewerage disposal works, or either or both, or other improvements under the provisions of this chapter, the costs of which are to be levied and assessed upon the property benefited, first pass at a general or special meeting an ordinance declaring its intention to construct such sewer system, or sewerage disposal works, or portion thereof, or other improvements under this chapter and stating in such resolution or ordinance the specific boundaries of the proposed sewerage district, which boundary lines shall be plainly and distinctly stated so that it may be plainly determined therefrom what property or properties are to be included in said proposed district, the general character of the said proposed sewerage system and sewerage disposal works, or portion thereof and the estimated cost of same. That the costs of the same are to be assessed against all the property included within such sewerage district: *Provided, however,* That it shall be stated that such sewerage district shall not include for assessment, property occupied by streets, cross streets and alleys in said district. Said

resolution or ordinance shall fix the time, not less than five days, in which protests against said proposed improvements and works may be filed in the office of the city clerk, and it shall be the duty of such clerk to cause such resolution or ordinance, after the same shall become a law, to be published in the official newspaper of the city or village in at least one issue before the time fixed in such resolution or ordinance for filing such protest, and an affidavit of such publication shall be filed with the clerk on or before the time fixed for the hearing of such protest.

If protests against the proposed improvements by owners of more than two-thirds of the front feet of lots of land included within the assessment district therein provided shall be filed on or before the day fixed for such filing, the council or trustees shall not proceed further with such work unless three-fourths of the members of the council or board of trustees shall vote to proceed with such work.

If no such protest is filed, or if such or any protest is filed, and after hearing the same, three-fourths of the city council, or trustees, shall vote to proceed with such work, the council or trustees shall at the next regular meeting proceed to consider the same, and shall then, or at any subsequent time proceed to enact an ordinance for such improvement. By the provisions of such ordinance, a local improvement district shall be established to be called "Local Sewerage Improvement District No. (numbering it)", which shall include all the property fronting on the street or streets and all the lots and parcels of lands included within the boundary lines of the said local sewerage improvement district as heretofore designated by the said council or board of trustees, other than such property and is occupied by streets or alleys. Such ordinance shall provide that such sewerage improvement shall be made and that the cost and expense thereof shall be fixed and assessed upon all the property in such local sewerage improvement district, which costs shall be assessed in proportion to the property front feet of such lands or lots included in said sewerage improvement district as hereinbefore stated, and as in this chapter provided and in proportion to the benefits derived by said sewerage improvement: *Provided*, That the city council or trustees may expend from the general fund for such purposes such sums as in their judgment may be fair and equitable in consideration of the benefits accruing to the general public by reason of such sewerage improvement.

4. The expense of repairing and maintaining such sewer system and sewerage disposal works, when completed, shall be paid and borne by the city or village. Whenever any expense or cost of work shall be assessed on any land, lots, or pieces or parcels of land, the amount of said assessment or expenses shall become a lien upon such lands, lots or parcels of land, and shall take precedence of all other liens and may be foreclosed in accordance with the provisions of law.

Such suit or suits may be in the name of the city or village of (naming it), as plaintiff. And in such proceedings, where the court trying the case shall be satisfied that the work has been done or material furnished, which, according to the true intent of this chapter or any ordinance passed in connection therewith by

such city or village, would be properly chargeable upon the lot or lands thereby, or along such lots or lands, or that the same or any part thereof may be of benefit to or are within the boundary lines of such improved district, a recovery shall be permitted and a charge enforced to the extent of the proper proportion or value of the work or labor or material which would be chargeable upon such lot or land notwithstanding any informalities, irregularities or defects in any of the proceedings of such municipal corporation, or any of its officers.

5. Upon the passage of an ordinance as herein provided, the committee on streets, together with the sewer committee, or other proper authority of said city, town or village, shall make out an assessment roll according to the provisions of said ordinance, and shall certify the same to the council or trustees of said city, town or village.

6. Upon receiving said assessment roll, the clerk of said city, town or village shall give notice by two successive publications in the official newspaper of said city, town or village that said assessment roll is on file in his office, and the date of filing the same, and said notice shall state the time at which the council or trustees will hear and consider objections to said assessment roll, by the parties or any party aggrieved by such assessment. The owner or owners of any property which is assessed in such assessment roll, whether named there or not in such assessment roll, may within ten days of the last publication provided herein, file with the clerk his or her objections, in writing, to said assessment or any portion thereof, which objections must be definite and specific as to the property or piece of property included in said assessment roll to which said objection is made, as well as specific grounds of such objections.

7. At the time appointed for hearing said objections to such assessment, the council or trustees shall hear and determine all objections which have been filed by any parties interested to the regularity of the proceedings in making such assessment, and the correctness of such assessment, and the amount levied upon any lot, part or parcel of land, and the council or trustees shall have power to adjourn such hearing from time to time and shall have power in their discretion to overrule such objections in whole or in part, or to revise, correct, confirm, set aside, or to order such assessment to be made de novo, and such council or trustees shall make an order approving and confirming such proceedings and assessments as corrected by them, and their decision shall be a final determination of the regularity, validity and correctness of said assessment to the amount thereof levied on each lot or parcel of land.

8. Any person who has filed objections to such assessment or re-assessment, as herein provided, shall have the right to appeal to the District Court of this State in and for the county in which the said city, town or village may be situated.

9. Such appeal shall be made by filing written notice of appeal with such clerk of said city, town or village, within five days after such assessment or re-assessment roll shall have been approved and confirmed by the said council or trustees, and the said notice shall describe the property and the objections of such appellant to such

assessment, and such appellant shall also file with the clerk of the District Court, aforesaid, within fifteen days after the approval and confirmation of such roll by the council or trustees, a copy of said notice of appeal, assessment or re-assessment roll or proceedings thereon, certified by the clerk of such city, town or village, together with a bond to such city, town or village, conditioned to pay all costs that may be awarded against the appellant in such sum not less than two hundred dollars with such surety as shall be approved by the judge of the said court, and the case shall be docketed by the clerk of the said court in the name of the person taking such appeal against such city, town or village, as "an appeal from assessment." Said cause shall then be at issue and shall have precedence over all civil cases pending in said court, except the proceedings relating to the act of eminent domain by cities or towns, actions of forcible entry and detainer. Such appeals shall be tried in said court as in the case of equitable causes except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment, in so far as the same affects the property of the appellant, from which judgment an appeal shall lie in the Supreme Court, as in other cases. In case the assessment is confirmed the fees of the clerk of the city, town or village for copies of the record shall be taxed against the appellant with other costs.

10. All such assessments shall be known as "special assessments for sewerage improvements," and shall be levied and collected as separate taxes in addition to the taxes for general revenue purposes, to be placed on the tax roll for collection subject to the same penalties in collection, and in the same manner as other city, town or village taxes.

11. Whenever the mayor or council or trustees of any city, town or village, shall, under authority in them vested under any law of this State or this chapter or the charter or ordinance of such city, town or village, cause any sewerage work or improvement to be done under the provisions of this chapter, or the laws aforesaid, or any sewerage disposal works to be built or constructed thereunder, the expense of which is chargeable to the property within the limits and boundary lines of the sewerage district, or any sewerage district formed, ordered or laid out under the provisions of this act, they may, in their discretion, provide for the payment of the costs and expense of such improvement by bonds of the district which shall include the property liable to assessment for the payment of the cost and expense of such improvement according to the city, town or village charter, this chapter or any ordinances passed in connection with this chapter, for the purposes of such improvement. Such bonds may be issued to the contractor constructing or building such sewer system, or sewerage disposal works, or portion thereof, or other improvements connected therewith in payment thereof; or the mayor and council, or the trustees of such city, town or village, or other officer or officers of such city, town or village thereto authorized by charter or ordinance, may sell the same at not less than their par value, net, and pay the proceeds to the contractor. Such bonds shall not be issued in excess of the contract price and expense of such work or improvement; such bonds may be issued in the

name of the city, town or village in which such improvement district is situated, which shall be known and designated as "Special Assessment Sewerage Improvement Bonds, District No. (naming it," which shall include all property liable for assessment within the boundary lines of said improvement district, for such local sewerage improvement according to the city, town or village charter, this chapter or any ordinances passed in connection with this chapter for the purposes of such improvement: *Provided, however,* That in determining the amount for which such bonds may be issued the interest coupon thereunto attached shall not be included. Said bonds shall by their terms be made payable on or before a date not to exceed ten years from and after the date of issue of such bonds, which latter date may be fixed by resolution or order by the council or trustees of the city, town or village; and shall bear such interest as may be provided by charter or ordinance, not exceeding eight per cent per annum. Such bonds shall be in such denomination as shall be provided in the ordinance ordering their issue and shall be numbered from one upward, consecutively, and such bond and coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: *Provided, however,* That said coupons may in lieu of being so signed have printed thereon fac-simile of the signatures of said officers; and each bond shall have the seal of such city, town or village affixed thereto and shall refer to the improvement for the payment of which the same shall be issued. Each bond shall provide that the principal sum thereon named and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise.

When district bonds are issued under this act for such improvement or improvements, the costs of which are by law charged by special assessment against the property within any improved district, the council, or trustees, or other authorized officer, board or body, shall assess the costs and expense of such improvement against the lots and parcels of land included within such improvement district, and which under the provisions of law and the charter or ordinances of such city, town or village shall be liable therefor; but the ordinance levying such assessment shall declare that the sum charged thereby against each of said lots or parcels of land may be paid in equal annual installments; the number of which installments shall be equal to the number of years which the bonds issued to pay for the improvement may run, with interest upon the whole sum so charged at a rate fixed by ordinance; and each year thereafter one of such installments, together with the interest due thereon, and on all installments thereafter to become due, shall be collected in such manner as shall be provided by law and the charter or ordinances of such city, town or village for the collection of assessments for such improvements in cases where no bonds are issued.

The owner of any lot or parcel of land charged with any such assessments may redeem the same from all liability for such assessment by paying the entire assessment charged against such lot or parcel of land, without interest, within thirty days after notice to him of such assessment, which notice shall be given as follows: The city treasurer shall, as soon as the assessment roll has been placed

in his hands for collection, publish a notice in the official newspaper of the city, town or village, for ten consecutive days, or two consecutive weekly issues, that the said roll is in his hands for collection and that any assessment therein may be paid at any time within thirty days from the date of the first publication of such notice without penalty, interest or cost. The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days above mentioned, but may be issued at any time thereafter. The owner of any such lot or parcel of land may redeem the same from all liability for said assessment at any time after said thirty days by paying all the installments of said assessment remaining unpaid and charged against such property at the time of such payment with interest thereon at the rate of not to exceed eight per cent per annum from the date of issuance to the time of maturity of the last installment. In all cases where any assessment or any installment thereof is paid as herein provided the same shall be paid to the city treasurer, or officer whose duty it is to collect said assessment, and all sums so paid shall be applied solely to the payment of the cost and expense of such improvement and the redemption of the bonds issued therefor.

Where any piece of property has been redeemed from liability of the costs for any improvements as herein provided, such property shall not thereafter be liable for further assessment for the costs of such improvement except as hereinafter provided. No suit to set aside the said special assessment or to enjoin the making of the same shall be brought or any objection to the validity thereof shall be allowed after the expiration of thirty days from the date the amount due on each lot or piece of ground liable for such assessment is ascertained or confirmed by the council or trustees. The funds raised by such assessment shall be applied solely towards the redemption of said bonds, and the costs and expenses of such improvement.

The city treasurer or other authorized officer of such city, town or village shall pay the interest on the bonds authorized to be issued by this chapter out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this chapter, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds: *Provided*, That such bonds shall be called in and paid in their numerical order: *Provided, further*, That such call shall be made by publication in the city official newspaper on the day following the delinquency of any installment of the assessment or as soon thereafter as practicable, and shall state that Bonds No. (giving the serial number or numbers of the bonds called) will be paid on the day the next interest coupons on said bonds shall become due, and interest on said bonds shall cease upon such date.

12. Such bonds when issued to the contractor constructing said work or improvements in payment thereof, or when sold as above provided, shall transfer to the contractor, or other owner or holder, the right or interest of such city, town or village in or with respect to every assessment and the lien thereby created against the property

of the owners assessed who shall not have availed themselves of the provisions of this act in regard to the redemption of their property, as aforesaid, and shall authorize said contractor, and his assigns and the owners and holders of said bonds to receive, sue for and collect every such assessment embraced in any such bond by or through any of the methods provided by law for the collection of assessments for local improvements. And if the city, town or village shall fail, neglect or refuse to pay said bonds, or to properly collect any such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessments and foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds, and interest thereon, five per cent together with the costs of such suit.

Any number of holders of such bonds for any single assessment or improvement may join as plaintiff, and any number of owners of property on which the same are a lien may be joined as defendants in such suit. And such bonds shall be equal liens upon the property as assessments represented by such bonds, without priority of one over the other to the extent of the several assessments to the several lots and parcels of land.

13. In all cases of special assessments in local sewerage improvements or sewerage disposal works, of any kind, against any property, person or corporation whatsoever, where any such assessments have failed to be valid in whole or in part for want of form, or of sufficient informality or irregularity, or non-conformance with the charter, ordinances or provisions of law governing such assessments, the city council or trustees, or other authorized bodies or board shall be and they are hereby authorized to re-assess such special taxes or assessments and to enforce their collection in accordance with the provisions of law existing at the time the re-assessment was made; and it is further provided that whenever, for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the costs of sewerage improvement made and enjoined on the property, or on the owners of property in the local assessment district where the same is made, that it shall be lawful and the city council or trustees, or other authorized body or board is hereby directed and authorized to make re-assessment upon all the property in said local assessment district to pay for such improvements, such re-assessment to be made and collected in accordance with the provisions of law or ordinances existing at the time of the levy.

14. Nothing shall be construed as repealing or modifying any existing laws and methods for cities of the first or second class or that are organized under special or local laws, to make improvements as herein provided for, but shall be construed as additional and concurrent power and authority. Any city whose charter provides for the issuance of bonds for local improvements payable only from the proceeds of special assessments, is hereby authorized to issue such bonds in the manner and in the effect provided in this section, and the owner of any bonds shall look only to the fund provided by such assessment for the principal and interest of such bonds.

15. The holder of any bond issued under the authority of this chapter shall have no claim therefor against the city, town or village

by which the same is issued in any event, except for the collection of the special assessment made, for the work of improvement for which said bond was issued, but this remedy in case of non-payment shall be confined to the enforcement of such assessment. A copy of this subdivision shall be plainly written, printed or engraved upon the face of each bond so issued.

16. In the construction of a sewer or sewerage system under the provisions of this chapter, no sewer or sewerage system which shall be laid, placed or constructed parallel to any water main, water pipe or conduit, shall be laid, placed or constructed within at least six feet of such water main, water pipe or conduit: *Provided, however,* That this provision of this chapter shall not apply to place or places where said sewer or sewer system shall have to cross either under or over any such water pipe, work or conduit.

Historical: Laws 1905, 334, Sec. 12.

Assessment of Benefits: An assessment made under this section should be made with reference to the frontage of the lots and lands and the benefits to be derived to the abutting property by reason of the sewer improvement; the number of front feet of lots and lands is not the sole controlling fact for consideration in the levy of a special assessment. *Blackwell v. Village of Coeur d'Alene* (1907) 13 Ida. ...; 90 Pac. 353.

Contest of Proceedings: A property owner desiring to contest the collection or levy of a sewer assessment, must make his protest or initiate his proceedings within the time required by this section, or he will be precluded from thereafter doing so, except in cases where the board of trustees or council acts without jurisdiction. *Ib.*

Redemption of Property: Any property owner may redeem his property

from the lien of the assessment by paying the whole thereof, and at the same time paying all interest which has accrued up to the time of the payment of the assessment; the redemptioner need not pay interest to the date of maturity of the final payment if he redeems prior to that time. *Ib.*

Rights of Bondholder: In case municipal authorities fail or neglect to collect sewer district assessment or the property owner refuses or neglects to pay the same, the warrant or bondholder may compel the municipal authorities to act by writ of mandate, or may proceed in the ordinary way to foreclose his lien through the District Court in the same manner as he would foreclose any other mortgage or lien; the claim or lien is a charge in rem only and is not enforceable against the person of the owner but only against the property. *Ib.*

Committee to Supervise Construction Work.

Sec. 2354. All sewerage improvement, or the construction of sewerage disposal works, as contemplated in this chapter, shall be made and done under the supervision of the sewer committee who are authorized to receive bids for the construction and making of the same, and to enter into such contract or contracts as may be necessary to have such work or improvements completed as soon, and in such a manner, as may be consistent with the proper procedure. All contracts for such work or improvements shall provide that the same shall be completed in all things with strict accordance with the plans and specifications for such improvements, as shall be provided for by said committee, its engineers or surveyors. No contract herein provided for shall go into effect, in so far as the committee or city, town or village are concerned, to be binding upon it or them, until the assessment herein provided for shall be confirmed; and in the event the assessment or the assessment rolls herein provided for shall not be confirmed, then such contracts shall be of no further force or effect.

Historical: Laws 1905, 334, Sec. 13.

Committee to Turn Over System.

Sec. 2355. Whenever and as soon as the sewer system herein provided for is, in the judgment of the committee, ready for use, the committee shall turn the said sewer system and disposal works over to the mayor and city council, or town and village trustees, as the case may be for the purpose of maintaining, operating and conducting the said sewer system and disposal works, and thereafter the power and authority hereby given to the sewer committee to build, keep, conduct and maintain said sewer system and disposal works therein, shall be exercised by said council or trustees. The committee shall turn over the sewer system to said city, town, or village, and all property pertaining thereto, together with all the books, profiles, papers, maps, and accounts relating to the building, construction or purchase thereof, as the case may be, and the city council or trustees shall thereupon take possession and charge of, as well the management, conducting and maintaining the same, and in so doing, it may alter, improve, and extend such works from time to time as the growth of the city, town, or village, or the wants and conveniences of the inhabitants thereof, may require, and the committee may turn over a completed portion or portions of such work to the council or trustees before the final completion thereof by it, and as often and as fast as such portion is turned over to the council or trustees, they must accept the same and conduct and maintain it accordingly.

Historical: Laws 1905, 334, Sec. 14.

Maps and Plans to Be Kept.

Sec. 2356. The committee shall cause accurate profiles, maps, plans, and specifications to be made of the lines of sewerage as actually built and constructed, so as to show the location of the branches, nye branches, manholes, lampholes, flushes and flushing tanks, the depth of the sewer, the size of the pipe used in connection therewith, and any other information that may be of value and convenience for future reference or information for the city, town, or village, or its officer or officers.

Historical: Laws 1905, 334, Sec. 15.

Quarterly Statements of Committee.

Sec. 2357. The committee shall cause a quarterly statement in detail of its receipts and disbursements to be made and signed by its chairman and clerk, and filed with the city clerk, who shall preserve the same among the files of the city, town, or village office, which statement shall be received and acted upon by the council or trustees; and said committee shall file with said clerk, to be acted upon by the said council or trustees, a full, true and correct statement quarterly of all the property, implements, and material in its possession and pertaining to the sewer system, together with the condition and value thereof.

Historical: Laws 1905, 334, Sec. 16.

Regulation of System by City.

Sec. 2358. Upon the turning over of the said sewerage system, or any part thereof, by the said committee to the said council or trus-

tees, said city, town or village shall have power to pass ordinances fixing the tolls, rents, rates, rules, and regulations for the use of such sewer and sewerage system, where same is used by persons residing or not residing within the district, or persons residing without the corporate lines of said city, town, or village, who may use the same or any part thereof, or through whose property the same may pass and who may desire the use thereof.

Historical: Laws 1905, 334, Sec. 17.

Same: Powers of City.

Sec. 2359. Said cities, towns, or villages shall have the power to pass any and all ordinances for the enforcement of the provisions of this chapter, or for the future use, care and operation in any manner of said sewer or sewerage system, or sewerage disposal work or works, providing penalties not inconsistent with the laws of the State of Idaho for the enforcement of such rules, ordinances and regulations concerning or connected therewith.

Historical: Laws 1905, 334, Sec. 18.

Validating Prior Assessments and Bonds.

Sec. 2360. All acts of whatsoever kind and nature done and performed, as well as all bonds or other evidence of indebtedness heretofore issued or ordered issued, or assessments for sewer improvements made, by cities, towns, or villages of the State of Idaho under and by virtue of "an act entitled an act to authorize and empower cities, towns, and villages, within the State of Idaho to construct, maintain and operate a sewerage system and sewerage disposal works, appointing a committee therefor, and defining and regulating their powers and duties; providing for the levying of a special assessment of such works and the expenses connected therewith, and providing for the penalty of non-compliance therewith," approved the 20th day of February, 1903, are, and the same shall be, hereby legalized, validated and confirmed in every particular, form or respect.

Historical: Laws 1905, 334, Sec. 19.
The act referred to in this section is

Laws 1903, 26, which is superseded by the act embraced in this chapter.

CHAPTER 15.

INSTALLMENT PAYMENT OF IMPROVEMENT ASSESSMENTS.

Section

- 2361. Application to pay assessment in installments.
- 2362. Applications to be kept.
- 2363. Lien of assessments.
- 2364. Issuance, sale and redemption of bonds.
- 2365. Collection of installments.
- 2366. Accounts to be kept: Interest and sinking funds.

Section

- 2367. Same; Entries of payments.
- 2368. Obligations no part of limited indebtedness.
- 2369. Bonds to be redeemed serially.
- 2370. Other laws unaffected.
- 2371. Application to previous assessments.

Application to Pay Assessment in Installments.

Sec. 2361. Whenever, in any incorporated city, town or village within this State, having a population of one thousand or more, according to the last official census made by the State or general Govern-

ment, the common council, board of trustees, or other competent authority of such city, shall have proceeded to improve any street, or part of street, or to lay any sewer, within the corporate limits thereof, and shall have assessed the cost of such improvement or sewer to the property benefited thereby, or liable therefor, according to the provisions of the charter of such city, it shall be lawful for the owner of any property so assessed for such an improvement or sewer, at any time within ten days after notice of such assessment is first published, to file with the auditor, clerk, or other city officer, who by the provisions of the charter thereof, keeps the records of such city, a written application to pay said assessments in installments; and such written application shall state that the said applicant and property owner does hereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to improve the street, or lay the sewer for which said assessment is levied, and in the apportionment of the cost therefor. Said application shall contain a provision that the said applicant and property owner agrees to pay said assessment in ten annual installments, with interest at the same rate on all of said assessments which have not been paid as that expressed in the bond issued to pay for such improvement. Said application shall also contain a statement by lots or blocks, or other convenient description, of the property of the applicant assessed for such improvement or sewer. No application as aforesaid, shall be received and filed by the auditor, clerk, or other officer, if the amount of such assessment with any previous assessment for street improvement or sewers assessed against the same property and remaining unpaid, shall equal or exceed the valuation of said property, as shown by the last tax roll of the county in which it is situated: *Provided*, That the bonds herein authorized to be issued shall not be issued unless the total amount due from all persons who shall file applications for permission to pay assessments in installments as in this chapter provided, (after deducting all applications which are by the terms of this section required to be rejected) shall aggregate the sum of one thousand dollars. The majority of the owners of the property so assessed may select a competent person to inspect such improvement under the direction of the city engineer of said city. If an inspector be so selected by such owners of property so assessed, he shall be paid out of the funds available for such street improvements or sewers, the sum of three dollars per diem for time actually engaged in such work of inspection.

Historical: Laws 1905, 297, Sec. 1.

Applications to Be Kept.

Sec. 2362. The auditor, clerk or other officer who is charged with keeping the records of such city, town or village, shall keep all such applications as are specified in the preceding section in convenient form for examination. The applications received for each street improvement and each sewer shall be separate, and he shall also enter in a book kept for that purpose, under separate heads for each street improvement and each sewer, the date of filing of each application, the name of the applicant, a description of the property and the amount of the assessment as shown in the application.

Historical: Laws 1905, 297, Sec. 2.

Lien of Assessments.

Sec. 2363. After the expiration of the time for filing application for the payment of assessments for improvement of streets or laying of sewers by installments, as provided in Section 2361, the auditor, clerk, or other officer shall enter, in a docket kept for that purpose, under separate heads for each street or sewer by name or number, a description of each lot or parcel of land or other property against which such assessment is made, or which bears or is chargeable with the cost of such improvement or sewer, with the name of the owner and the amount of such unpaid assessment. Such docket shall stand thereafter as a lien docket, as for taxes assessed and levied in favor of such city, and for the amounts of such unpaid assessment therein docketed, with interest on said unpaid assessment at the rate of not to exceed eight per cent per annum, against each such lot or parcel of land or other property, until such assessments and interest are paid in the manner hereinafter provided; and all unpaid assessments and interest shall be and remain a lien on each lot or parcel of land or other property, respectively, in favor of such city, town or village, and such lien shall have priority over all other liens and encumbrances whatsoever.

Historical: Laws 1905, 297, Sec. 3.

Issuance, Sale and Redemption of Bonds.

Sec. 2364. When in any city, town or village (within the terms of this chapter), such bond lien docket shall be made up as hereinafter provided, as to the assessments for the improvement of streets or the laying of sewers, such city, town or village, shall, by ordinance, authorize the issuance of its bonds in convenient denominations not exceeding one thousand dollars each, and in all equal to the total amount of unpaid assessments, for such street improvement and sewers, and for which applications to pay under the provisions of this chapter have been filed, as shown by said bond lien docket; and such bonds shall, by the terms thereof mature in ten years from the date thereof, and be payable in gold coin of the United States of America, and bear interest, not to exceed eight per cent per annum, payable semi-annually, said interest to be evidenced by coupons attached to said bonds: *Provided*, Said bonds shall mature serially, one tenth thereof during each year, and the right to take up and cancel one-tenth of said bonds upon the payment of the face value thereof with accrued interest to date of payment, at any semi-annual date, at or after one year from the date of such bond or bonds, shall be, and hereby is, vested in the city, town or village issuing such bonds. Notice stating that certain bonds are to be taken up and cancelled as aforesaid, and that the interest thereon shall cease at the interest payment period next following, shall be published in a newspaper printed and published and of general circulation in the county where such bonds are issued, not less than twice during the month preceding the semi-annual period: *Further provided*, That if said bonds are made payable at a bank in a state or city without the State of Idaho, it shall be the duty of the city treasurer to mail a marked copy of the paper containing said notice forthwith to said bank; and after said semi-annual period, interest upon the bonds designated in such notice shall cease. Such

bonds before issuance shall be signed by the mayor, president, or other executive head of such city, town or village, countersigned by its auditor, clerk, or other recording officer, and authenticated by the seal of such city, town or village attached thereto; and shall be registered consecutively by number and denomination of each in a book to be kept by the auditor, clerk, or other recording officer of such city, town or village, to be known and designated as "The Improvement Bond Register." Each of such bonds, whether issued for the improvement of streets, or the laying of sewers, shall have distinctly and plainly inscribed or printed on the face thereof the registered number of such bond and the words "Improvement Bonds," with the name of the city, town or village, issuing the same. Such bonds shall be advertised for sale and sold for the highest price obtainable, but for not less than par and accrued interest; and the proceeds thereof shall be paid by the purchaser to the treasurer of such city, town or village, and the par value thereof credited to the respective street improvement and sewer fund, for which said bonds are issued; and the accrued interest and premium accruing from the sale of said bonds shall be credited to the general fund of said city, town or village, the fund from which interest is paid on street and sewer warrants, or to the improvement bond sinking fund, as the common council, board of trustees or other competent authorities shall direct.

Historical: Laws 1905, 297, Sec. 4.

Collection of Installments.

Sec. 2365. Thereafter there shall be due and payable annually, for ten consecutive years, to the treasurer, city clerk, tax collector, or other proper officer of such city, town or village, by the owner of each lot or parcel of land assessed for the improvement of any street or the laying of any sewer, whose application to pay the cost of such improvement or sewer by installments has been filed as provided in Section 2361, ten per cent of the cost of such improvement or sewer assessed against the property of such owner, as appears by the bond lien docket described in Section 2363, with the amount of one year's interest, at not to exceed eight per cent per annum on unpaid assessments or installments. The first payment aforesaid shall be due and payable at the expiration of one year from the date of said assessment in the bond lien docket, and subsequent payments at the expiration of each year thereafter. Should such owner or owners neglect or refuse to pay the sum or sums aforesaid as the same shall become due and payable, for a period of twenty days, then the same shall be collected in the same manner and with the same penalties as delinquent street or sewer assessments are collected in such city, town or village. It shall be the duty of the auditor, clerk, or other recording officer charged with keeping the records of such city, town or village, when the installments and interest on any assessment in the bond lien docket are due, to make the proper extensions of such installments and interest on said bond lien docket, and to turn the same over to the tax collector, treasurer, or other proper officer of said city, town or village, whose duty it shall be to notify the owner or owners of property that the installments aforesaid are due and payable, but a failure of such owner or owners to receive such notice shall not be taken or held to prevent the collection of the same as

herein provided. The treasurer of such city, town or village shall issue a receipt to the person or persons paying said installments and interest, and shall file duplicates of said receipts with the auditor, clerk or other recording officer, and when the treasurer, clerk, tax collector or other proper officer, whose duty it is to collect taxes, returns said bond lien docket, said auditor, clerk or other recording officer shall make the proper entries on said bond lien docket, showing the amount of each payment and the date thereof: *Provided, however,* That at any time after the issuance of such bonds any owner at the time being of any such lot or parcel of land, or other property against which such assessment is made and lien docketed, may pay into the treasury of such city, town or village, the whole amount of such assessment and for which such lien is docketed, together with the full amount of interest and cost accrued thereon to the next semi-annual interest date after such payment, and, upon producing to the auditor, clerk or other recording officer of such city, town or village, the receipt of the treasurer or other proper tax collector thereof (in which receipt shall be not only stated the amount of such payment, but also a description of the lot or parcel of land or other property, upon which such payment is made), such auditor, clerk or other recording officer, shall enter in such lien docket, opposite the entry of the lien therein, the fact of such payment and the date thereof, and that the lien thereof is discharged.

Historical: Laws 1905, 297, Sec. 5.

Accounts to Be Kept: Interest and Sinking Funds.

Sec. 2366. The treasurer of any such city, town or village, receiving any funds accruing by virtue of this chapter, shall keep such funds and the account thereof separate and apart from the other funds of such city, town or village. The amount of such funds paid on account of installments, and interest on unpaid installments, shall be paid to the credit of funds to be known and designated as "Improvement Bond Sinking Fund" and "Improvement Bond Interest Fund" respectively. The amount placed to the credit of the "Improvement Bond Sinking Fund," shall, from time to time, under the direction of the common council, board of trustees or other competent authorities, be deposited in such bank as will pay the highest rate of interest, or be invested in, or used for the purchase of, improvement bonds of such city, town or village at par. In the purchase of improvement bonds the accrued interest thereon shall be paid out of the improvement bond interest fund, and all interest received by the treasurer on account of coupons due shall be placed to the credit of the improvement bond interest fund. Interest due on improvement bonds shall be paid out of the improvement bond interest fund. All bonds purchased by a city, town, or village, shall be held by the treasurer thereof as a sinking fund, and shall be disposed of by direction of the common council, board of trustees or other competent authority, when required for the redemption of bonds previously issued as they shall become due and payable.

Historical: Laws 1905, 297, Sec. 6.

Same: Entries of Payments.

Sec. 2367. Entries of payments of installments, interest, and cost

made under the provisions of this chapter, shall be made in the lien docket, aforesaid as the same shall be received, with the date thereof, and such payments made and entered in said lien docket shall be and operate as a discharge of such lien to the amount of such payment, and from the date thereof.

Historical: Laws 1905, 297, Sec. 7.

Obligations No Part of Limited Indebtedness.

Sec. 2368. No obligation incurred by any city, town or village in this State by virtue of this chapter shall be deemed or taken to be within or any part of the limitations by law as to indebtedness by such city, town or village.

Historical: Laws 1905, 297, Sec. 8.

Bonds to Be Redeemed Serially.

Sec. 2369. Bonds issued under the provisions of this chapter shall be redeemed serially, beginning with the number one, and the notice provided for in Section 2364, shall give therein the numbers of the bonds which will be redeemed, and the time and place at which such redemption will be made; and after such time so fixed for redemption no interest shall accrue or become payable on such bonds so notified for redemption.

Historical: Laws 1905, 297, Sec. 9.

Other Laws Unaffected.

Sec. 2370. Nothing in this chapter shall be construed as repealing or modifying any existing laws prescribing the method by means of which cities, towns or villages (having more than one thousand inhabitants as defined by this chapter) whether organized under special charters, local laws, or general incorporating acts, may make improvements and lay sewers, but this chapter shall be construed as additional and confirmed authority.

Historical: Laws 1905, 297, Sec. 10.

Application to Previous Assessments.

Sec. 2371. Any city, town or village within the classes described in this Chapter, which may have heretofore levied special assessments for the purpose of street improvements or for the laying of sewers, if such assessments be not delinquent and remain unpaid when this chapter shall become a law, may take advantage of the provisions of this chapter by giving notice in the manner by its charter provided for making special assessments, and said notice shall be in substantial compliance with the provision of Section 2361.

Historical: Laws 1905, 297, Sec. 11.

TITLE 14

IRRIGATION DISTRICTS

Chapter

1. Organization of district.
2. Election of directors.
3. Powers and duties of the board of
4. Issuance, confirmation and sale of bonds.
5. Levy and collection of assessments.

Chapter

6. Construction work and acquirement of property.
7. Changing boundaries and consolidation.
8. Miscellaneous provisions.

Note: This title is based on a similar California statute known as the "Wright Act", which in its present form may be found in Henning's General Laws, 559. The first act in this State on the subject is Laws 1895, 183, which was superseded by Laws 1897, 146. The latter act was amended, and re-enacted as amended, by Laws 1899, 408; and repealed by Laws 1903, 150, which is, as amended by Laws 1907, 484, the basis of this title.

CHAPTER 1.

ORGANIZATION OF DISTRICT.

Section

2372. Who may propose organization.
2373. Petition for organization.
2374. Procedure on petition.
2375. Notice of election: Qualifications of voters

Section

- 2376 Conduct of election.
2377. Canvass of votes: Completion of organization.

Who May Propose Organization.

Sec. 2372. Whenever fifty, or a majority of the holders of title, or evidence of title, to lands susceptible of one mode or irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, or when for other reasons they desire to organize the proposed territory into one district, they may propose the organization of an irrigation district under this title: *Provided*, Said holders of title or evidence of title shall hold such title or evidence of title to at least one-fourth part of the total area of the land in the proposed district, which will be assessable for the purposes of the district. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district shall be sufficient evidence of title for the purpose of this title, but other evidence may be received, including receipts or other evidence of the rights of entrymen on lands under any law of the United States or of this State, and such entrymen shall be competent signers of such petition, and the lands on which they have made such entries shall, for the purposes of said petition, be considered as owned by them.

Historical: Laws 1903, 150, Sec. 1; amended Laws 1907, 484, Sec. 1.

California Legislation: See Henning's Gen. Laws, 559, Sec. 1.

Constitutionality: This act is a re-

enactment of the district law of 1899, and is substantially the same as the Wright law of California and is constitutional. *Nampa etc. Irr. Dist. v. Brose* (1905) 11 Ida. 474; 83 Pac. 499.

Petition for Organization.

Sec. 2373. A petition shall be first presented to the board of county commissioners of the county in which the greatest proportion of the proposed district is situated, signed by the required number of holders of title or evidence of title to the required area of such proposed district, evidenced as above provided, which petition shall set forth and describe, with the degree of certainty required by law in a tax roll, all the lands proposed to be included in said district, and shall state whether it is proposed to purchase irrigation works already in operation or to construct new works, or as the case may be, and shall pray that the same be organized into an irrigation district. The petition, together with all maps, cross sections and papers filed therewith, shall, at all proper hours, be open to public inspection at the office of the clerk of the board of county commissioners between the date of their said filing and the date of the final hearing thereon.

Historical: Laws 1903, 150, Sec. 2, and last sentence of Sec. 3; amended Laws 1907, 484, Sec. 1.

California Legislation: Similar

with additional provisions: Henning's Gen. Laws 559, Sec. 2.

Cited: Nampa etc. Irr. Dist. v. Brose (1905) 11 Ida. 474; 83 Pac. 499.

Procedure on Petition.

Sec. 2374. If it be proposed by said petition to construct new works for the irrigation of said lands, or to purchase works only partially completed and not yet in operation, the petitioners must accompany the petition with a map of the proposed district. Said map shall show the location of the proposed canal or other works by means of which it is intended to irrigate the proposed district, and of all the canals situated within the boundaries of the proposed district: *Provided*, That canals that only pass through said lands and which do not in fact irrigate any of the same need not be shown. If said water supply be from natural streams, the flow of said stream or streams shall be stated in terms of cubic feet per second. If the water supply for said district is to be gathered by storage reservoirs, said map shall show the location of said proposed reservoirs, and shall give their capacity in acre feet. Said map shall be drawn to a scale of two inches to the mile. Cross sections of the proposed canal, and all canals existing within the boundaries of said proposed district, and shown on said map, and of all proposed dams and embankments, shall be given in sufficient number to show the contemplated mode of construction, and the capacity shall be given in cubic feet per second of the proposed and said existing canals. Such cross sections shall be drawn to a scale of ten feet to the inch, and said map and cross sections, together with an estimate of the cost of such works, shall be certified to by a well known and competent irrigation engineer. The petitioners must also accompany the petition with a bond, to be approved by the said board of county commissioners, in double the amount of the probable cost to the county of organizing such district, conditioned that the bondsmen will pay all said costs, in case said organization be not effected. Such petition may be filed with the clerk of the board of county commissioners at any time, and on such filing said clerk shall publish a general notice that (giving the first name on the petition) and others have filed a petition for the organization of an irrigation district. If it be proposed in said petition to construct

a new canal system, such notice shall state that fact and give the numbers of the sections in which the lands are situated which it is proposed to include in said district, but if it is proposed to purchase a canal already in operation, the notice shall state that fact and give the name by which such canal system is generally known, and shall state that the lands covered by said canal system are the lands proposed to be included in such district. The notice shall further state the time at which such petition will be presented to the board of county commissioners, which time shall be during a regular meeting of said board or a special meeting called for that purpose, and such notice shall be published two weeks before the day on which the same is to be presented, and if any portion of such proposed district be within another county or counties, then said notice shall be published in a newspaper published in each of said counties. When such petition is presented, the said board shall set a time for a hearing upon the same, which time shall not be less than four nor more than eight weeks from the date of presentation. A notice of the time of such hearing shall be published by said board, at least three weeks before the time of such hearing, in a newspaper published within each of the counties in which any part of said district is situated. A copy of such petition and all maps and other papers filed with the same shall be filed in the office of the State Engineer at least four weeks before the date set for such hearing. It shall be the duty of the State Engineer to examine such petition, maps and other papers, and, if he deem it necessary, to further examine the proposed district, the works proposed to be purchased, or the location of the works to be constructed, and he shall prepare a report upon the matter in such form as he deems advisable, and submit the same to the board of county commissioners at the meeting set for the hearing of said petition. Whenever the State Engineer shall report to the board of county commissioners against the organization of such district, said board of county commissioners shall refuse to further consider such petition unless it be requested in writing so to do by three-fourths of the land owners in said proposed district, such ownership to be determined as provided in Section 2372, and at the time set for said hearing the said board may, on receiving an adverse report from the State Engineer, adjourn the proceedings for two weeks for the purpose of enabling the petitioners to file a request for such further proceedings. In any case, the petitioners may amend such plan of irrigation at such hearing to meet the approval of the State Engineer or as they may find advisable, and when they shall have determined to proceed with the matter, said board may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as they may find proper, and shall make an order on their records describing the lands which they shall have determined to include in said district, and stating that such lands will be organized into an irrigation district if the vote of electors thereafter to be taken on the proposition shall be favorable to such organization: *Provided*, That any person whose lands are susceptible of irrigation from the same source may, in the discretion of the board, upon application by him, have such lands included in said district. Such board shall also make

an order dividing the district into three divisions of as nearly equal size as may be practicable which shall be numbered first, second and third; and one director, who shall be an elector and resident in the division, shall be elected from each division by the district at large.

Historical: Laws 1907, 484, Sec. 1; amending, by addition of Sec. 2A, Laws 1903, 150.

Notice of Election: Qualifications of Voters.

Sec. 2375. Said board shall then give notice of an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this title. Such notice shall describe the lands in said district with the certainty required in an ordinary deed and shall state the name of the proposed district as designated by the board of commissioners, and shall state that a map showing the lands in said district is on file in the office of the board of county commissioners, which map, if not previously made as required herein, shall be made by the petitioners after the determination of said commissioners of the question of what lands shall be included in the proposed district, and if previously made, lands added to said district or deducted therefrom by the board may be indicated thereon. Said notice shall be published for four weeks prior to such election, in a newspaper published within each of said counties as aforesaid. Such notice shall require the electors to cast ballots which shall contain the words "Irrigation District..... Yes," or "Irrigation District..... No," or words equivalent thereto, and also the name of one person from each such division for director of said district. No person shall be entitled to a vote at any election held under the provisions of this title unless he shall possess all the qualifications required of electors under the general laws of the State, and be a holder of land and a resident in the proposed district: *Provided*, That when it is proposed in said petition to build new irrigation works, all persons who possess the qualifications of electors under the general laws of the State and residing within any county in which said district or any part thereof is situated, and competent to sign said petition, shall be permitted to vote at all elections, and hold office in said district, until such irrigation works are complete and in operation.

Historical: Laws 1907, 484, Sec. 1; amending, by addition of Sec. 2B, Laws 1903, 150.

California Legislation: See Henning's Gen. Laws, 561, Sec. 6.

Conduct of Elections.

Sec. 2376. Such election shall be conducted as nearly as practicable in accordance with the general laws of the State: *Provided*, No particular form of ballot shall be required, and that the provisions of the election laws as to the form and distribution of ballots shall not apply. At the time of making said order, said board of county commissioners shall establish as many election precincts not exceeding three, as may be necessary and define the boundaries thereof, which boundaries, when the district is divided into three precincts, shall be the same as the division boundaries above provided for, and which said precincts may thereafter be changed by the board

of directors of such district except in case of three precincts. Said board shall appoint a registrar for each precinct so established, who shall have the same powers and shall perform the same duties and receive the same compensation as registrars under the general election laws of the State, but there shall be added to the usual elector's oath the following words: "And I am a resident and holder of land within the boundaries of the Irrigation District," or the following words: "And I am a resident of this county and a holder of land within the boundaries of the Irrigation District." Said board shall also appoint three judges of election for each such election precinct who shall perform the same duties as near as may be as judges of election under the general laws of the State.

Historical: Laws 1903, 150, Sec. 3; amended Laws 1907, 484, Sec. 1. Omitting the last sentence which has been transferred to Sec. 2373.

California Legislation: See Henning's Gen. Laws, 561, Sec. 6.

Cross Reference: General election laws: Title 3. Duties of registrars: Secs. 393-401. Elector's oath: Sec. 396. Duties of judges and clerks. Secs. 414-438.

Canvass of Votes: Completion of Organization.

Sec. 2377. Immediately after any election for voting upon the organization of an irrigation district, the judges of said election shall forward the official results of said election to the clerk of said board of county commissioners. The said board of county commissioners shall meet within ten days after said returns are received, and shall proceed to canvass the votes cast thereat, and if upon such canvass it appears that two-thirds of the votes cast are "irrigation District Yes," the said board shall, by order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for such several offices to be duly elected to such offices. No action shall be commenced or maintained, or defense made affecting the validity of such organization after two years from and after the making and entering of said order. Said board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of each county in which any portion of such lands are situated. If it shall appear, however, that more than one-third of said votes are "Irrigation District No," then a record of that fact shall be duly entered upon the minutes of said board, and all proceedings in regard to the organization of said district shall be void, and the expenses properly incurred thereunder may be collected on the bond provided for in Section 2374. From and after the date of such filing of said order of the board of county commissioners, the organization of such district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying according to law, and shall hold such offices, respectively, until their successors are elected and qualified. The board of directors so elected shall meet within thirty days after their election and elect a president, and appoint a secretary and treasurer, who shall perform the duties imposed upon such officers under this title. All officers of the district, except as above

provided, must be residents thereof. Such treasurer shall execute an official bond in the sum of five thousand dollars, to be approved by the board of directors of the district: *Provided*, That when the amount of money in the hands of said treasurer exceeds the sum of five thousand dollars, said board of directors shall require an additional bond in a sum at least double the amount of money in the hands of said treasurer in excess of said five thousand dollars.

Historical: Laws 1907, 284, Sec. 1; amending, by adding Sec. 3A, Laws 1903, 150.

California Legislation: See Henning's Gen. Laws, 561, Secs. 9, 10.

CHAPTER 2.
ELECTION OF DIRECTORS.

Section	Section
2378. Election, term of office, qualifications and bond of directors.	2381. Voting and count of ballots.
2379. Notice of election: Judges: Registration and oath.	2382. Disposal of ballots.
2380. Conduct of election: Canvass of returns: Filling vacancies.	2383. Informalities disregarded: Postponement of canvass.
	2384. Statement of result.

Election, Term of Office, Qualifications and Bond of Directors.

Sec. 2378. On the second Tuesday of December following the organization of any district an election shall be held at which shall be elected three directors by the electors of the district at large. The terms of the office of directors shall be three years. The directors shall, immediately after the first regular election following such organization, be selected by lot so that one shall hold his office for the term of one year, one for the term of two years, and one for the term of three years, and an election shall be held in each district on the second Tuesday in December of each year thereafter, at which one director shall be elected for a term of three years, or until his successor is elected and qualified. Such director must be a qualified elector and a resident of the division of the director whom he is to succeed in office. Within ten days after receiving the certificates of election hereinafter provided for, said officer shall take and subscribe the official oath, and file the same in the office of the board of directors, and execute the bond hereinafter provided for. Each member of said board of directors shall execute an official bond in the sum of five thousand dollars, which said bonds shall be approved by the judge of the probate court of said county where such organization was effected, and shall be recorded in the office of the county recorder thereof and filed with the secretary of said board. All official bonds provided for in this title shall be in the form prescribed by law for the official bond of county officers.

Historical: Laws 1903, 150, Sec. 4. Omitting the proviso relating to the 1904 election of directors in districts organized under the 1899 law.

California Legislation: See Henning's Gen. Laws, 561, Sec. 7.

Cross Reference: Form of official bonds: Secs. 288, 292.

Notice of Election: Judges: Registration and Oath.

Sec. 2379. The secretary of the district shall give notice of all elections in said district subsequent to the organization thereof, by posting the same in three public places in each such precinct and

in the office of said board, at least four weeks before the day of such election, which notices shall state the time of said election and the polling place in each precinct; and the officer to be elected or other question to be voted upon, as the case may be. At least ten days before the holding of any such election, the board of directors shall appoint three electors of each precinct judges of election therein who shall constitute a board of election for such precinct. At least four weeks before any such election said board of directors shall appoint a registrar for each precinct of the district, except the precinct in which the office of the secretary of the board is located. In the precinct in which his office is located, or where there is but one voting precinct in the district, the secretary of the district shall act as registrar. Such registrars shall be governed in the performance of their duties by the general election laws of the State as far as they are applicable; and must be at their places of registration, to receive applications for registration, from nine o'clock a. m. to nine o'clock p. m., on each of three Saturdays next preceding the date of election. In addition to the usual elector's oath, the following shall be added: "And I am a resident in, and holder of, land within the boundaries ofIrrigation District," or the following words: "And I am a resident of this county and a holder of land within the boundaries of theIrrigation District." No election for any purpose shall be held in any irrigation district without such registration, and only those persons duly registered shall be allowed to vote thereat.

Historical: Laws 1903, 150, Sec. 5;
amended Laws 1907, 484, Sec. 1.

trans: Sec. 393-401. Electors' oath:
Sec. 396.

Cross Reference: Duties of regis-

Conduct of Election: Canvass of Returns: Filling Vacancies.

Sec. 2380. The said judges shall elect a chairman who may administer all oaths required in the progress of an election, and appoint judges and clerks, if during the progress of an election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of the election. The board of election of each precinct must, before opening the polls, appoint two clerks to act as clerks of election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of tally lists and the making and certifying said result, and the disposition of the ballots after the election, shall be the same as near as may be as provided for election under the general election law of the State: *Provided*, That the returns shall be delivered to the secretary of the district, and that no list, tally paper or certificate returned from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns, and they shall proceed in the

same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when they shall have declared the result, the secretary shall make full entries in his records in like manner as is required of the county recorder in general elections. The board of directors must declare elected the person or persons having the highest number of votes given for each office. The secretary must, immediately, make out and deliver to such person or persons a certificate of election signed by him and authenticated with the seal of the board. In case of a vacancy in the office of director the vacancy shall be filled by appointment by the remaining members of the board from the division in which the vacancy occurred. An officer appointed to fill a vacancy as above provided shall hold his office until the next regular election for said district, at which election a director shall be elected for the remainder of the unexpired term.

Historical: Laws 1903, 150, Sec. 6;
amended Laws 1907, 484, Sec. 1.

Voting and Count of Ballots.

Sec. 2381. Voting may commence as soon as the polls are open and may continue during all the time the polls remain open, and shall be conducted as nearly as practicable in accordance with the provisions of Title 3 of this Code relating to elections. As soon as the polls are closed the judges shall open the ballot box and shall commence counting the votes; and in no case shall the ballot box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one by the chairman of the board of election or one of the judges, who shall open them and read aloud the name of each person contained thereon, and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for such office, and shall keep the number of votes by tallies as they are read by such chairman or judge. The counting of the votes shall continue without adjournment until all the votes have been counted.

Historical: Laws 1903, 150, Sec. 7.
"Title 3 of this Code relating to elections", for "the act concerning 'elections and electors', approved Febru-

ary 25, 1891, and acts amendatory and supplementary thereof."

California Legislation: See Henning's Gen. Laws, 566, Sec. 23.

Disposal of Ballots.

Sec. 2382. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes, each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in words and figures at full length. Each certificate shall be signed by all the members of the board of election and by both clerks. One of said certificates, with the poll list and tally paper to which it is attached, shall be retained by the chairman of the board of election, and preserved by him for at least six months. The ballots shall be strung on a cord or thread by the said chairman, during the counting thereof, in the order in which they are entered upon the tally list by the

clerks; and said ballots, together with the other of said certificates with the poll list and tally paper to which it is attached, shall be sealed by the said chairman in the presence of the other of said judges and clerks, and indorsed "Election returns of (naming precinct) precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by said chairman, or by other safe and responsible carrier designated by him, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the precinct that is claimed to have been incorrectly counted.

Historical: Laws 1903, 150, Sec. 8.

Informalities Disregarded: Postponement of Canvass.

Sec. 2383. No list, tally paper or certificate returned from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. If, at the time of the meeting, the returns of each precinct in which polls have been opened have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the vote of the district for each person voted for and declaring the result thereof.

Historical: Laws 1903, 150, Sec. 9. Omitting the sentence "The board must meet at its usual place of meeting on the first Monday after each

election to canvass the returns" which is covered by Laws 1907, 484 (Sec. 2380).

Statement of Result.

Sec. 2384. The secretary of the board of directors must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the district and in each voting precinct thereof.
2. The names of the person or persons voted for.
3. The office to fill which each person was voted for.
4. The number of votes given in each precinct to such person or persons.
5. The number of votes given in the district for such person or persons.

The board of directors must declare elected the person or persons having the highest number of votes given for each office.

Historical: Laws 1903, 150, Sec. 10. Omitting the clause: "In case of a vacancy in the office of director the vacancy shall be filled by appointment by the board of county commissioners from the division in which the vacancy occurs", and the concluding sentence relating to the term of office

of appointees, which are in conflict with Sec. 6 as amended by Laws 1907, 484 (see Sec. 2380), providing for filling vacancies by appointment of the remaining directors. The clause requiring the secretary to make out a certificate of election is also omitted because duplicated in Sec. 2380.

CHAPTER 3.
POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

Section	Section
2385. Election of officers and meetings of board.	2390. Officers must not be interested in contracts.
2386. By-laws: Purchase and condemnation of property.	2391. Special assessments: Elections.
2387. Legal title to property: Actions.	2392. Power to incur debts.
2388. Conveyance of property: Actions.	2393. Report to State Engineer.
2389. Compensation of directors and officers.	2394. Statement of financial condition.
	2395. County commissioners to have access to books.

Election of Officers and Meetings of Board.

Sec. 2385. On the first Tuesday in January next following their election, the board of directors shall meet and organize as a board, elect a president from their number and appoint a secretary and treasurer, who shall each hold office during the pleasure of the board. On the organization of the first board of directors of any such district, they shall designate some place within the district as the office of said board and said board shall hold a regular monthly meeting in their office on the first Tuesday in every month, and such special meetings as may be required for the proper transaction of business: *Provided*, That all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order five days' notice of such special meetings. The order must specify the business to be transacted at such special meeting and none other than that specified shall be transacted: *Provided, further*, That whenever all members of the board are present, however called, the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board must be public, and a majority shall constitute a quorum for the transaction of business; but on all questions requiring a vote there shall be a concurrence of at least a majority of the members of the board. All records of the board shall be open to the inspection of any elector during business hours.

Historical: Laws 1903, 150, Sec. 12; amended Laws 1907, 484, Sec. 1.	California Legislation: See Henning's Gen. Laws, 562, Secs. 13, 14.
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By-Laws: Purchase and Condemnation of Property.

Sec. 2386. Said board shall have the power to manage and conduct the business and affairs of the district; make and execute all necessary contracts; employ and appoint such agents, officers and employees as may be required, and prescribe their duties; and to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of said land as may be necessary and just to secure the just and proper distribution of the same. Said by-laws, rules and regulations must be printed in convenient form for distribution throughout the district. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation work and the line of any canal or canals, and the necessary branches for the same,

on any lands which may be deemed best for such location. Said board shall also have the right to acquire, either by purchase, condemnation or other legal means, all lands and water rights, and other property necessary for the construction, use and supply, maintenance, repair and improvement of said canal or canals and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. In case of purchase, the bonds of the district hereinafter provided for may be used to their par value in payment. Said board may also construct the necessary dams, reservoirs and works for the collection of water for said district; and do any and every lawful act necessary to be done that sufficient water may be furnished to each land owner in said district for irrigation purposes. The use of all water required for the irrigation of the lands of any district formed under the provisions of this title, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this title, is hereby declared to be a public use, subject to the regulation and control of the State, in the manner prescribed by law.

Historical: Laws 1907, 484, Sec. 1; amending, by adding Sec. 12A, Laws 1903, 150.

California Legislation: Similar in part: Henning's Gen. Laws, 563, Sec. 15.

Legal Title to Property.

Sec. 2387. The legal title to all property acquired under the provisions of this title shall immediately and by operation of law vest in such irrigation district, and shall be held by such district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this title. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided.

Historical: Laws 1903, 150, Sec. 13.

California Legislation: Same: Henning's Gen. Laws, 567, Sec. 29.

Conveyance of Property: Actions.

Sec. 2388. The said board is hereby authorized and empowered to take conveyance or other assurances for all property acquired by it under the uses and provisions of this title, in the name of such irrigation district, to and for the purposes herein expressed; and to institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper in order to fully carry out the provisions of this title, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this title, or acquired in pursuance thereof. In all courts, actions, suits or proceedings the said board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district.

Historical: Laws 1903, 150, Sec. 14.

California Legislation: Similar with

other provisions: Henning's Gen. Laws 563, Sec. 15.

Compensation of Directors and Officers.

Sec. 2389. The members of the board of directors shall each receive not more than three dollars per day for each day spent attend-

ing the meetings, or while engaged in official business under the order of the board. The board shall fix the compensation to be paid to the other officers named in this title to be paid out of the treasury of the district: *Provided*, That said board shall, upon the petition of fifty, or a majority of the freeholders within such district, submit to the electors at any general election a schedule of salaries and fees to be paid hereunder. Such petition must be presented to the board twenty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are determined and declared under this title.

Historical: Laws 1903, 150, Sec. 38.

California Legislation: Similar:
Henning's Gen. Laws, 577, Sec. 57.

Officers Must Not Be Interested in Contracts.

Sec. 2390. No director or any other officer named in this title shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

Historical: Laws 1903, 150, Sec. 39.

California Legislation: Same: Henning's Gen. Laws, 577, Sec. 58.

Special Assessments: Elections.

Sec. 2391. The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit, to the qualified electors of the district, the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this title. Such election must be called upon the notice prescribed, and the same shall be held, and the result thereof determined and declared in all respects in conformity with the provisions of Section 2396. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such elections the ballots shall contain the words "Assessment—Yes" or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes", the board shall immediately levy an assessment sufficient to raise the amount voted. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board and collected at once, and in the same manner as other assessments provided for herein; and when collected, shall be paid into the district treasury for the purposes specified in the notice of such special election.

Historical: Laws 1903, 150, Sec. 40.

California Legislation: Similar but

| last sentence omitted: Henning's Gen. Laws, 577, Sec. 59.

Power to Incur Debts.

Sec. 2392. The board of directors, or other officers of the district,

shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this title; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void: *Provided*, That for the purpose of organization or for any of the purposes of this title, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of two thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at seven per cent per annum.

Historical: Laws 1903, 150, Sec. 41.

California Legislation: Similar:
Henning's Gen. Laws, 578, Sec. 61.

Report to State Engineer.

Sec. 2393. At least as often as once a year after organization, the board of directors shall make a report to the State Engineer of the condition of the work of construction, as to capacity, stability and permanency, and whether or not the plan of irrigation formulated under the provisions of this title is being successfully carried out, and whether or not in the opinion of the board the funds available will complete the proposed works. Upon the receipt of such report by the State Engineer, he shall make such suggestions and recommendations to such board of directors as he may deem advisable for the best interest of the district.

Historical: Laws 1903, 150, Sec. 37.

Statement of Financial Condition.

Sec. 2394. On or before the first Tuesday of February of each year the board of directors of each irrigation district organized under this title, shall publish in at least one issue of some newspaper published in the county or counties in which such district is situated, a full, true and correct statement of the financial condition of said district on the first Monday of the preceding January, giving a statement of all liabilities and assets of the district on such first Monday of January.

Historical: Laws 1903, 150, Sec. 57.

County Commissioners to Have Access to Books.

Sec. 2395. Any board of directors of any such irrigation district, or the secretary thereof, shall at any time allow any member of the board of county commissioners, when acting under the order of such board, to have access to all books, records and vouchers of the district which are in possession or control of said board of directors or said secretary of said board.

Historical: Laws 1903, 150, Sec. 58.

CHAPTER 4.

ISSUANCE, CONFIRMATION AND SALE OF BONDS.

Section	Section
2396. Plan of construction: Issu-	2397. Form of bonds: Contract with
ance of bonds: Election.	United States.

Section	Section
2398. Repayment of money advanced by United States.	2403. Same: Hearing and confirmation.
2399. Apportionment of benefits.	2404. Sale of bonds.
2400. Same: Hearing.	2405. Payment of bonds and interest.
2401. Confirmation of proceedings.	2406. Redemption of bonds.
2402. Same: Notice: Rules of procedure.	

Plan of Construction: Issuance of Bonds: Election.

Sec. 2396. As soon as practicable after the organization of any such district the board of directors shall, by a resolution entered on its records, formulate a general plan of its proposed operations, in which it shall state what constructed works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise the funds for carrying out said plan. For the purpose of ascertaining the cost of any such construction work, said board shall cause such surveys, examinations and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans and estimates, shall be made under the direction of a competent irrigation engineer and certified by him. Said board shall then submit a copy of the same to the State Engineer, and within ninety days thereafter the State Engineer shall file a report upon the same with said board, which report shall contain such matters as, in the judgment of the State Engineer, may be desirable. Upon receiving said report said board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district possessing the qualifications prescribed by this title, the question whether or not the bonds of said district, or the right to enter into an obligation with the United States in the manner hereinafter provided, in the amount as determined, shall be authorized. Notice of such election must be given by posting notices in three public places in each election precinct in said district at least four weeks before the date of said election, and the publication thereof for the same length of time in some newspaper published in the district, and in case no paper is published in the district, then in a paper published in each county in which the district or any part thereof is located. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, and, in case such maps and estimates have been made, it shall further state that copies thereof, and in all cases it shall state that said report of the State Engineer, are on file and open to public inspection by the people of the district, at the office of said board and at the office of the State Engineer at the State Capitol. Said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this title governing the election of officers: *Provided*, That no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain

the words "Bonds—Yes" or "Bonds—No," or other words equivalent thereto. If two-thirds of the votes cast are "Bonds—Yes," the board of directors shall cause bonds in said amount to be issued; if more than one-third of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record. And whenever thereafter said board in its judgment deems it for the best interest of the district that the question of the issuance of bonds in said amount, or any other amount, shall be submitted to the electors, it shall so declare of record in its minutes, and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election.

Historical: Laws 1903, 150, Sec. 15; amended Laws 1907, 484, Sec. 1.

Additional Bond Issue: Where an irrigation district has been regularly organized and has had surveys, maps, plans and estimates made in accordance with the requirements of this section, and a bond issue has been made but the money raised thereon is not sufficient for the completion of the projected works, it is unnecessary to make a new survey and additional maps and plans as a prerequisite to ordering and holding another election authorizing a further bond issue. *Pioneer Irrigation District v. Campbell* (1904) 10 Ida. 150; 77 Pac. 328.

Confirmation of Bond Issue: Proceedings for the confirmation of a

bond issue by an irrigation district may be instituted before the issuance of the bonds in order to procure a judicial determination of their validity, and to facilitate their sale, *Nampa etc. Irr. Dist. v. Brose* (1905) 11 Ida. 474; 83 Pac. 499.

Exclusion of Land From Plan: The owners of land property included in an irrigation district, may waive their rights to obtain water from the general district plan, and may obtain water from other sources, and by means of a different plan, where it is clearly shown that no one residing in the district is in any manner injured or prejudiced thereby, and in such case no part of the bond issue can be apportioned to the excluded land. *Ib.*

Form of Bonds: Contract With United States.

Sec. 2397. The bonds authorized by any vote shall be designated as a series and the series shall be numbered consecutively as authorized. The portion of the bonds of a series sold at any time shall be designated as an issue, and each issue shall be numbered in its order. The bonds of each issue shall be numbered consecutively, commencing with those earliest falling due, and they shall be designated as eleven year bonds, twelve year bonds, etc. They shall be negotiable in form and payable in money of the United States as follows, to-wit: At the expiration of eleven years from each issue, five per cent of the whole number of bonds of such issue; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent: *Provided*, That such percentages may be changed sufficiently so that every bond shall be in an amount of one hundred dollars or a multiple thereof, and the above provisions shall not be construed to require any single bond to fall due in partial payments. Interest coupons shall be attached thereto, and all bonds and coupons shall be dated on January first or July first next following the date of their authorization and they shall bear interest at a rate of not to exceed seven per cent per annum, payable semi-annually on the first day of January and July of each year. The

principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than one thousand dollars, and shall be signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. Coupons attached to each bond shall be signed by the secretary. Said bonds shall express on their face that they were issued by the authority of this title, naming it, and shall also state the number of the issue of which such bonds are a part. The secretary and treasurer shall each keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. In case the money raised by the sale of all the bonds be insufficient for the completion of the plans and works adopted, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said plan by levy of assessment therefor, in the manner hereinafter provided. After such authorization of indebtedness shall have been made by the voters evidenced by such bond election, the board of directors may, instead of issuing bonds in the manner provided in this title, enter into an obligation or contract with the United States for the construction of the necessary works under the provisions of an act of Congress entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and the rules and regulations thereunder; or the board of directors may issue bonds for a portion of the amount of indebtedness authorized by such bond election and enter into an obligation or contract with the United States to the extent of the remainder of such amount.

Historical: Laws 1907, 484, Sec. 1; amending by adding Sec. 15A, Laws 1903, 150. "Title, naming it", inserted for "act, stating its title and date of approval", line 32, to conform to Code description. "June" inserted for "January" 17, 1902, to correctiv

specify the act referred to, which may be found in U. S. Comp. Stat. (1905 Sup.) 349.

California Legislation: See Henning's Gen. Laws, 568, Sec. 31.

Repayment of Money Advanced by United States.

Sec. 2398. Whenever any amount of money shall have been advanced by the United States for the construction of irrigation works, contemplated under the provisions of this title, by the authority of said act of Congress, the taxing powers of the district, as provided in this title, shall be used to repay into the treasury of the United States the amount of money so advanced in the manner contemplated in this title, and as may be provided in such contract between the directors of said district and the United States; and such levies and assessments shall be made each year under the authority of the district as will return to the treasury of the United States the amount or proportion of such money advanced as may have been agreed to in such contract. The works constructed under the provisions of such contract with the United States shall be controlled and administered by the district in accordance with the provisions of said act of Congress and the regulations thereunder.

Historical: Laws 1907, 484, Sec. 1; amending, by adding Sec. 15B, Laws 1903, 150.

Apportionment of Benefits.

Sec. 2399. Whenever the electors shall have authorized an issue of bonds as hereinbefore provided, the board of directors shall examine each tract or legal subdivision of land in said district, and shall determine the benefits which will accrue to each of such tracts or subdivisions from the construction or purchase of such irrigation works; and the cost of such works shall be apportioned or distributed over such tracts or subdivisions of land in proportion to such benefits; and the amount so apportioned or distributed to each of said tracts or subdivisions shall be and remain the basis for fixing the annual assessments levied against such tracts or subdivisions in carrying out the purposes of this title. Such board of directors shall make, or cause to be made, a list of such apportionment or distribution, which list shall contain a complete description of each subdivision or tract of land of such district with the amount and rate per acre of such apportionment or distribution of cost, and the name of the owner thereof; or they may prepare a map on a convenient scale showing each of said subdivisions or tracts with the rate per acre of such apportionment entered thereon: *Provided*, That where all lands on any map or section of a map are assessed at the same rate a general statement to that effect shall be sufficient. Said list or map shall be made in duplicate and one copy of each shall be filed in the office of the State Engineer, and one copy shall remain in the office of said board of directors for public inspection. Whenever thereafter any assessment is made either in lieu of bonds, or any annual assessment for raising the interest on bonds, or any portion of the principal, or the expenses of maintaining the property of the district, or any special assessment voted by the electors, it shall be spread upon the lands in the same proportion as the assessment of benefits, and the whole amount of the assessment of benefits shall equal the amount of bonds or other obligations authorized at the election last above mentioned.

Historical: Laws 1907, 484 Sec. 1; amending, by adding Sec. 15C, Laws 1903, 150.

Constitutionality: While this section as it stood under the act of 1899, of which the act of 1903 was a substantial re-enactment, was possibly subject to constitutional objection in that it required assessments to be made according to acreage instead of

according to benefits, yet the section, as amended, in connection with other sections of the district law which require assessments to be made according to benefits, and provide for proceedings to contest the question of benefits, remove all constitutional objections. *Pioneer Irr. Dist. v. Bradley* (1902) 8 Ida. 310; 68 Pac. 295.

Same: Hearing.

Sec. 2400. After the board shall have examined the lands in said district, and before proceeding to make the assessment of benefits and the list and apportionment as provided in the last preceding section, they shall give notice to the owners of said lands that they will meet at their office on a day to be stated in said notice for the purpose of making such assessment and list and apportionment. They shall, as far as practicable, give such notice by a postal card mailed or delivered to each of said land owners, and the same shall be mailed or delivered to land owners residing out of the county where said office is located at least ten days before the day fixed for such meeting, and to such as reside in said county it shall be

so mailed or delivered at least six days before the time for such meeting. For the purpose of giving notice to non-residents and such owners as it is not reasonably practicable to notify personally or by mail as aforesaid, the notice shall be published in some newspaper published in the same county two weeks before the time of such meeting. At such meeting the board shall proceed to hear all parties interested who may appear, and they shall continue in session from day to day until the assessment is completed. They shall hear all evidence offered, including any maps or surveys which any owners of lands may produce, and they may classify the lands in such way that the assessment when completed shall be just and equitable. Any person interested who shall fail to appear before the board shall not be permitted thereafter to contest said assessment or any part thereof except upon a special application to the court in the proceedings for confirmation of said assessment, showing reasonable excuse for failing to appear before said board of directors. In case any land owner makes objection to said assessment or any part thereof before said board, and said objection is overruled by the said board, and the land owner does not consent to the assessment as finally determined, such objection shall, without further proceedings, be regarded as appealed to the District Court and to be heard at the said proceedings to confirm as aforesaid.

Historical: Laws 1907, 484, Sec. 1;
amending by adding Sec. 15D, Laws
1903, 150.

Confirmation of Proceedings.

Sec. 2401. The board of directors of the irrigation district shall file in the District Court of the county in which their office is situated a petition, praying in effect that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state generally that the irrigation district was duly organized and the first board of directors elected, that due and lawful proceedings were taken to issue bonds in an amount to be stated, and that said assessment, list and apportionment were duly made and a copy of said assessment, list and apportionment shall be attached to said petition, but the petition need not state other facts showing such proceedings: *Provided*, That after the organization of the district is complete, a petition may be filed for the confirmation of the proceedings so far, or after the authorization of any issue of bonds such petition may be so filed, and where the procedure is by separate petitions for the confirmation of different portions of said proceedings, subsequent proceedings may be in the name of re-opening of the same case, but shall not be considered as authorizing any rehearing of the matter theretofore heard and decided.

Historical: Laws 1903, 150, Sec. 16;
amended Laws 1907, 484, Sec. 16.

Cited: Pioneer Irr. Dist. v. Camp-

bell (1904) 10 Ida. 159; 77 Pac. 328;
Nampa etc. Irr. Dist. v. Brose (1905)
11 Ida. 474; 83 Pac. 499.

Same: Notice: Rules of Procedure.

Sec. 2402. The court or judge shall fix the time for the hearing of said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be

given and published in a newspaper published in the same county for four successive weeks. The notice shall state the time and place fixed for the hearing of the petition, and the prayer of the petition, and that any person interested in the subject matter of said petition may, on or before the day fixed for the hearing thereof, demur to or answer said petition. None of the pleadings in said matter need be sworn to. Every material statement of the petition not controverted by answer must be taken as true, and every person or party failing to answer the petition shall be deemed to have admitted all the material allegations of the petition. The rules of pleading and practice provided by the Code of Civil Procedure which are not inconsistent with this title are applicable to the special proceedings herein provided for. A motion for a new trial, and all proceedings in the nature of appeals or rehearing, may be had as in any ordinary suit at law.

Historical: Laws 1903, 150, Sec. 17; amended Laws 1907, 484, Sec. 1.

Sufficiency of Service: The constructive service by posting the application authorized by this section, is

sufficient to confer jurisdiction; the proceeding is one in rem. Nampa etc. Irr. Dist. v. Brose (1905) 11 Ida. 474; 83 Pac. 499.

Same: Hearing and Confirmation.

Sec. 2403. Upon the hearing of such special proceedings, the court shall examine all of the proceedings set up in the petition, and may ratify, approve and confirm the same or any part thereof, and in case of a petition to confirm said assessment, list, apportionment and distribution, the court shall hear all objections either filed in said proceedings or brought up from the hearing before the board of directors as aforesaid, and for that purpose any person desiring to be heard upon objections overruled by the board of directors, shall state the substance of said objections and the ruling of the board in his answer. The court shall disregard every error, irregularity or omission which does not affect the substantial rights of any party, and if the court shall find that said assessment, list and apportionment are in any substantial matter erroneous or unjust, the same shall not be returned to said board, but the court shall proceed to correct the same so as to conform to this title and the rights of all parties in the premises, and the final order or decree of the court may approve and confirm such proceedings in part, and disapprove other parts of said proceedings; and in case the proceedings for the organization of the district and the issue of bonds are approved, the court shall correct all the errors in the assessment, apportionment and distribution of costs as above provided, and render a final decree approving and confirming all of the said proceedings. In case of the approval of the organization of the district and the disapproval of the proceedings for issuing bonds, the district shall have the right to institute further proceedings for the issue of bonds de novo. The costs of the special proceedings may be allowed and apportioned among the parties thereto in the discretion of the court.

Historical: Laws 1903, 150, Sec. 19; amended Laws 1907, 484, Sec. 1.

Proceedings for Confirmation: On proceedings for the confirmation of the organization of an irrigation dis-

trict and of the bonds issued by it, the court may examine and determine the legality and validity of, and approve and confirm each and all of the proceedings for the organization of such

district from and including the petition for its organization, together with all other proceedings which may affect the legality or validity of the

bonds, and the order for the sale thereof. *Nampa etc. Irr. Dist. v. Brose* (1905) 11 Ida. 474; 83 Pac. 499.

Sale of Bonds.

Sec 2404. The board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous, to raise money for the construction of said canals and works, the acquisition of said property and rights, and otherwise to carry out the object and purposes of this title. Before making any sale the board shall, by resolution, declare its intention to sell a specified amount of the bonds, and if said bonds can then be sold at their face value and accrued interest, they may be sold without advertisement, otherwise said resolution shall state the day and hour and place of such sale, and shall cause such resolutions to be entered on the minutes, and notice of sale to be given by publication thereof at least four weeks in three newspapers published in the State of Idaho, one of which shall be a newspaper published in the county in which the office of the board of directors is situated, if there be a newspaper published in said county, and in other newspapers at their discretion. Said notice shall state that sealed proposals will be received by the board at their office for the purchase of the bonds until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, or may reject all bids; but in case no bids are received, or all bids are rejected, at the time stated in the advertisement, it shall not be again necessary to advertise the sale of the same bonds, but they may be sold at any time until cancelled: *Provided*, Said board shall in no event sell any of the said bonds for less than the par or face value thereof and accrued interest. If, for any reason, the duly authorized bonds of a district cannot be sold, or if at any time it shall be deemed for the best interests of the district to withdraw from sale all or any portion of an authorized bond issue, the board of directors may, in their discretion, cancel the same and they may levy assessments to the amount of the bonds cancelled: *Provided*, That the revenue derived from said assessments must be employed for the same purpose as was contemplated by the bond authorization; but no levy shall be made to pay for work or material, payment for which was contemplated by bonds which have been authorized, until bonds to the amount of said assessment have been cancelled. Assessments made in lieu of bonds cancelled shall be collected in the same manner, and shall have the same force and effect, as assessments levied under any provision of this title: *Provided*, That such assessment shall not, during any one year, exceed ten per cent of the total bond issue authorized by such district, unless a greater assessment shall be authorized by a majority vote of the qualified electors of the district voting at a general election or a special election called for that purpose, said special election to be held in the manner provided in Section 2391.

Historical: Laws 1903, 150, Sec. 21; amended Laws 1907, 484, Sec. 1.

California Legislation: See Henning's Gen. Laws, 559, Sec. 32.

Cited: *Nampa etc. Irr. Dist. v. Brose* (1905) 11 Ida. 474; 82 Pac. 499.

Payment of Bonds and Interest.

Sec. 2405. Said bonds and the interest thereon shall be paid by revenue derived from the annual assessment upon the land in the district; and all the land in the district shall be and remain liable to be assessed for such payment.

Historical: Laws 1903, 150, Sec. 22.
amended Laws 1907, 484, Sec. 1.

Redemption of Bonds.

Sec. 2406. Upon the presentation of the coupons due to the treasurer, he shall pay the same from the bond fund. Whenever, after ten years from the issuance of said bonds, said fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least four weeks in some newspaper published in the county, and in other newspapers which said board may deem, advisable, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted: *Provided*, That no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer under the direction of the board, in United States bonds, or the bonds or warrants of the state, or municipal or school bonds, which shall be kept in said bond fund and may be used to redeem said district bonds whenever the holders thereof may desire.

Historical: Laws 1903, 150, Sec. 32.

California Legislation: Similar:
Henning's Gen. Laws, 575, Sec. 52.

CHAPTER 5.**LEVY AND COLLECTION OF ASSESSMENTS.**

Section	Section
2407. Preparation of assessment book.	2412. Payment of assessments.
2408. Notice of correction of assessments.	2413. Delinquent list.
2409. Board of correction.	2414. Publication of delinquent list: Sales.
2410. Levy of assessment.	2415. Redemption: When and how made.
2411. Lien of assessment.	

Preparation of Assessment Book.

Sec. 2407. The secretary of the board of directors shall be the assessor of the district, and on or before August fifteenth of each year shall prepare an assessment book containing a full and accurate list and description of all the land of the district, and a list of the persons who own, claim or have possession or control thereof, during said year, giving the number of acres listed to each person. If the name of the person owning, claiming, possessing or controlling any tract of said land is not known, it shall be listed to "unknown owners."

Historical: Laws 1903, 150, Sec. 23.

Notice of Correction of Assessments.

Sec. 2408. On or before the first Monday in September of each year, the secretary of the board must give notice of the time the board of directors will meet to correct assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice. In the meantime the assessment book must remain in the office of the secretary for the inspection of all persons interested.

Historical: Laws 1903, 150, Sec. 24.

California Legislation: See Henning's Gen. Laws, 571, Sec. 37.

Board of Correction.

Sec. 2409. Upon the day specified in the notice required by the preceding section for the meeting, the board of directors which is hereby constituted a board of correction for that purpose, shall meet and continue in session from day to day, as long as may be necessary, not to exceed five days, exclusive of holidays, and may make such changes in said assessment book as may be necessary to make it conform to the facts. Within five days after the close of said session, the secretary of the board shall have the corrected assessment book complete.

Historical: Laws 1903, 150, Sec. 25.

California Legislation: Similar: Henning's Gen. Laws, 571, Sec. 38.

Levy of Assessment.

Sec. 2410. At its regular meeting in October, the board of directors shall levy an assessment upon the lands in said district upon the basis, and in the proportion, of the list and apportionment of benefits approved by the court as hereinbefore provided, which assessment shall be sufficient to raise the annual interest on the outstanding bonds. At the expiration of ten years after the issue of said bonds of any issue, the board must increase said assessment, as may be necessary from year to year, to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury, and shall constitute a special fund, to be called "Bond fund of Irrigation District." In case any assessment should be made for the purpose contemplated by a bond authorization, it shall be entered in a separate column of the assessment book in the same manner as the bond fund; and when collected shall constitute the "Construction Fund of Irrigation District."

Historical: Laws 1903, 150, Sec. 26; amended Laws 1907, 484, Sec. 1. "The

board" inserted before "must increase said assessment" to express the sense.

Lien of Assessment.

Sec. 2411. The assessment is a lien against the property assessed

from and after the first Monday in March of any year (the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue) and such lien is not removed until the assessments are paid, or the property sold for the payment thereof.

Historical: Laws 1903, 150, Sec. 27.

Payment of Assessments.

Sec. 2412. On or before the first day of November the secretary must deliver the assessment book to the treasurer of the district, who shall within ten days publish a notice in a newspaper published in each county in which any portion of the district may lie, that said assessments are due and payable and will become delinquent at six o'clock p. m. on the first Monday of January next thereafter, and also the times and places at which the payment of the assessments may be made, which notice shall be published for the period of two weeks. The treasurer must attend at the times and places specified in the notice, to receive assessments, which must be paid in lawful money of the United States; he must mark the date of payment of any assessment in the assessment book opposite the name of the person paying, and give a receipt to such person, specifying the amount of the assessment and the amount paid with a description of the property assessed. On the first Monday of January at six o'clock p. m. of each year, all unpaid assessments for the preceding year are delinquent: *Provided*, That if any person shall pay one-half of his assessments before they become delinquent as aforesaid, the remaining one-half shall not become delinquent until the first Monday in July at six o'clock p. m. of each year.

Historical: Laws 1903, 150, Sec. 28;
amended Laws 1907, 484, Sec. 1.

California Legislation: Similar:
Henning's Gen. Laws, 572, Sec. 41.

Delinquent List.

Sec. 2413. On or before the second Monday of January of each year, said treasurer shall begin the preparation of a delinquent list containing a description of all tracts of land upon which assessments are delinquent and the amount of assessments against each such tract and the name of the owner as shown on the assessment book, and thereafter and on or before the second Monday of July, the treasurer shall complete said delinquent list and shall properly certify the same and prepare a duplicate thereof; and deliver it to the secretary of the district. If any such assessment becomes delinquent the treasurer shall collect the same with the penalties added, as provided for delinquent county and State taxes.

Historical: Laws 1903, 150, Sec. 29;
amended Laws 1907, 484, Sec. 1.

Publication of Delinquent List: Sales.

Sec. 2414. During the first seven days of August the treasurer must commence to publish the delinquent list and the publication shall continue four weeks, and must contain the names of the persons and a description of the property delinquent at the time, and the amount of assessment and penalties, and the costs due opposite each name and description. After said publication shall have been made for the

first time, the treasurer shall collect twenty-five cents additional to the assessments and penalties on each description of land published. The treasurer must append and publish with the delinquent list a notice that unless the assessments delinquent together with penalties and costs are paid, the real property upon which said assessments are made will be sold at public auction, at a time and place therein specified. The publication must be made in some newspaper published in said district, if it can be so published, and if it can not be so published, then in some newspaper published in the county in which the office of the directors is situated; and if it can not be so published, then by posting in not less than three public places in said district, one of which shall be at the door of the office of said board. The time of said sale shall be fixed for the first Tuesday in September, and the place shall be at the office of said board of directors. The treasurer, as soon as he has made the publication required, must file with the secretary proof of such publication by affidavit and like proof of posting, in case such notice was posted, as herein required. The treasurer must attend at the time and place specified in the notice, and conduct the sale. The sale shall be conducted in all respects in the manner provided for the sale of property for delinquent county and State taxes, and may be postponed in the same manner, and the district shall become the purchaser of the property in the cases when the county would have become the purchaser of property at sales for delinquent county and State taxes. The treasurer must retain in his office a list of the property sold, stating name of owner as appears by assessment roll, amount for which sold and date of sale, and file a duplicate list with the recorder of the county in which the land is situated. The treasurer shall execute a duplicate certificate of sale, which shall contain the statements in substance required in certificates of sale in sales of county and State delinquent taxes, one of which shall be delivered to the purchaser and the other shall be filed by the treasurer in the office of the county recorder of the county in which the land is situated. When the district is the purchaser the duplicate certificate shall be filed with the secretary. Any irrigation district as a purchaser of any land at any such delinquent tax sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to the rights of redemption herein provided, may be conveyed by deed, executed and acknowledged by the president and the secretary of the board: *Provided*, That authority to so convey must be conferred by resolution of the board, entered on its minutes.

Historical: Laws 1903, 150, Sec. 30; amended Laws 1907, 484, Sec. 1.

California Legislation: See Henning's Gen. Laws, 572, Sec. 42.

Cross Reference: Sales for delinquent State and county taxes: Secs. 1743-1769.

Redemption: When and How Made.

Sec. 2415. Redemption can be made at any time within one year from the date of the sale. Redemption may be made by paying to the treasurer the amount for which the property was sold, together with ten per cent penalty and one per cent per month thereon. The treasurer shall thereupon deliver to the person redeeming a certificate of redemption, stating the description of the land sold, the name

of the owner as it appeared on the assessment roll, and the amount paid on such redemption, and shall note the redemption on his list of sales. When such certificate of redemption shall be presented to the county recorder where the land is situated, he shall mark the property as redeemed in his record of such sales. The treasurer must pay the amount received on such redemption to the person holding the certificate of sale, upon presentation thereof with satisfactory proof of ownership. When the district is purchaser, it may assign any certificate of sale to any person, within one year after the sale, upon receipt of the amount for which the property was sold to the district, with interest from the date of sale. If no redemption be made within a year after said sale, the treasurer shall, upon request, execute a deed to the holder of the certificate, which deed shall recite and contain the matters required in deeds for property sold for county and State taxes, and when so executed and delivered shall have the same effect.

Historical: Laws 1903, 150, Sec. 31.

California Legislation: See Henning's Gen. Laws, 574, Sec. 47.

CHAPTER 6.

CONSTRUCTION WORK AND ACQUIREMENT OF PROPERTY.

Section	Section
2416. Contracts for construction work.	2420. Intersection with streets, railroads, etc.
2417. Notice for bids dispensed with.	2421. Right of way over State lands.
2418. Payment of claims.	2422. Right of eminent domain.
2419. Payment of expenses: Water tolls.	

Contracts for Construction Work.

Sec. 2416. After adopting a plan for said canal or canals, storage reservoirs, and works, the board of directors shall give notice, by publication thereof not less than thirty days in one newspaper published in each of the counties comprising the district, if a newspaper is published therein, and in such other newspaper as they may deem advisable, calling for bids for the construction of such work, or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed, shall be opened in public; and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any and all bids and re-advertise for proposals. Contracts for the purchase of the material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for twenty-five per cent of the amount

of the contract price, conditioned upon the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer employed by the district, and approved by the board: *Provided*, That no contract of any kind shall be let by said board of directors unless there is sufficient money in the district treasury at the time such contract is let, available for such payment, to fully pay for the work or material so contracted for.

Historical: Laws 1903, 150, Sec. 33.

California Legislation: Similar:
Henning's Gen. Laws, 575, Sec. 53.

Notice for Bids Dispensed With.

Sec. 2417. On the petition of fifty or a majority of the owners of land in said district, to be determined as provided by Section 2372, the board of directors may do any work mentioned in the preceding section on behalf of the district, and it may use the construction fund therefor; in such case they need not publish notice for bids as provided in the last preceding section.

Historical: Laws 1907, 484, Sec. 1;
amending, by adding Sec. 33A, Laws
1903, 150.

Payment of Claims.

Ses. 2418. No claim shall be paid by the treasurer until allowed by the board, and only upon a warrant signed by the president, and countersigned by the secretary.

Historical: Laws 1903, 150, Sec. 34.

California Legislation: Same with

additional provisions: Henning's Gen.
Laws, 576, Sec. 54.

Payment of Expenses: Water Tolls.

Sec. 2419. The cost and expenses of purchasing and acquiring property and constructing works and improvements to carry out the formulated plan, shall be paid out of the construction fund. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portion of said canal and works as are completed and in use, including salaries of officers and employees, the board may either fix rates of tolls and charges for water against all persons using said canal for irrigation or other purposes, or they may levy assessments therefor or by both said tolls and assessments. The procedure for levying and collection of assessments shall conform to the provisions of this title relating to the payment of principal and interest of bonds. All assessments and tolls shall be listed and carried out in the regular assessment book and collected by the treasurer at the time and in the manner of the regular annual assessment. All special assessments are a lien on the lands assessed from the time when they are ordered. The board of directors may order tolls for water to be collected in advance. Whenever an assessment book or toll book shall be delivered to the treasurer, the secretary shall charge the treasurer with the total amount of the various amounts as carried out in said books. On the second Monday of January in each year the treasurer shall make a semi-annual settlement with the secretary, and deliver to the secretary a statement in brief of all assessments

delinquent at that time and account for all sums theretofore collected. The treasurer shall make such settlements for tolls at such times as may be ordered by the board. On the second Monday of July the treasurer shall make final settlement with the secretary, and deliver to the secretary a duplicate delinquent list and account for all sums not shown on said delinquent list. The secretary shall then charge the treasurer with the amount of said list and penalties added, and upon receiving an affidavit of publication thereof he shall charge the treasurer with twenty-five cents additional for each description published. On the first Monday after the sale, the treasurer shall make final settlement for assessments, by receiving credit for the property sold to the district and accounting for all of the balance.

Historical: Laws 1903, 150, Sec. 35;
amended Laws 1907, 484, Sec. 1.

California Legislation: Similar

through "other purposes", line 9, rest
omitted: Henning's Gen. Laws, 576,
Sec. 55.

Intersection with Streets, Railroads, Etc.

Sec. 2420. The board of directors shall have power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross, in such a manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said work, shall unite with said board in forming said intersections and crossings and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise to be crossed, cannot agree upon the amount to be paid therefor, or upon the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to the taking of land.

Historical: Laws 1903, 150, Sec. 36.
Omitting the concluding clause relative to rights of way over State land, which is embraced in the following section.

California Legislation: Similar:
Henning's Gen. Laws, 576, Sec. 56.

Right of Way Over State Lands.

Sec. 2421. The right of way is hereby given, dedicated and set apart, to locate, construct and maintain said works over and through any of the lands which are now or may be the property of the State.

Historical: Laws 1903, 150, Sec. 36.
Concluding sentence of section.

Right of Eminent Domain.

Sec. 2422. All irrigation districts organized under the laws of the State of Idaho shall have the right of eminent domain, with the power by and through their boards of directors, to cause to be condemned and appropriated in the name of and for the use of said districts, all lands, water rights, reservoirs, canals and works constructed or being constructed by private owners, and lands for reservoirs for the storage of needful waters, and all necessary appurtenances and

other property necessary for the construction, use and supply, maintenance, repair and improvement of said canal or canals and works. Said irrigation districts shall have the right by and through their boards of directors to acquire by purchase or other legal means, any or all of the property mentioned and referred to in this section. In any action or proceeding for the condemnation of any property mentioned and referred to in this section, wherein said irrigation district is a party, the plaintiff must, within six months after final judgment, pay the sum of money assessed, or said judgment will be annulled. Except as otherwise provided in this chapter, the provisions of the laws of Idaho relative to the right of eminent domain, civil actions and new trials and appeals, shall be applicable to, and constitute the rules of practice in, condemnation proceedings by said irrigation districts.

Historical: Laws 1907, 221, Secs. 1, 2, 3, 4.

CHAPTER 7. CHANGING BOUNDARIES OF DISTRICT.

Section

- 2423. Petition for annexation of adjacent land.
- 2424. Guardians and administrators may sign petition.
- 2425. Notice of petition.
- 2426. Hearing of petition.
- 2427. Assessment against petitioners.
- 2428. Order accepting or rejecting petition.
- 2429. Same: Overruling objections.

Section

- 2430. Election to determine change.
- 2431. Order changing boundaries.
- 2432. Order to be recorded.
- 2433. Same: Record in minutes.
- 2434. Exclusion of land from district.
- 2435. Survey of land to be excluded.
- 2436. Cost of survey.
- 2437. Changes to be recorded.
- 2438. Consolidation of districts.

Petition for Annexation of Adjacent Land.

Sec. 2423. The holder or holders of any title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, may file with the board of directors of said district a petition in writing praying that said land may be annexed. The petition shall describe the lands, and shall also describe the several parcels owned by the petitioners.

Historical: Laws 1903, 150, Sec. 44; amended Laws 1907, 484, Sec. 1.

additional provisions: Henning's Gen. Laws, 583, Sec. 86.

California Legislation: Similar with

Guardians and Administrators May Sign Petition.

Sec. 2424. A guardian, executor, or an administrator of an estate who is appointed as such under the laws of this State, and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition mentioned in this chapter for the change of boundaries of the district.

Historical: Laws 1903, 150, Sec. 54. "For the change of boundaries of the district" inserted for "why the boundaries of the district should not be

changed", to better express the sense.

California Legislation: Similar: Henning's Gen. Laws 585, Sec. 96.

Notice of Petition.

Sec. 2425. The secretary must cause a notice of the filing of such petition to be published three weeks in the manner of notices of special elections. The notice shall state the filing of such petition, and the names of the petitioners, a description of the lands mentioned in the said petition, and the prayer of said petition, and it shall notify all persons interested in or that may be affected by such change of boundaries of the district, to appear at the office of said board, at a time named in said notice, and show cause in writing, if any they have, why the lands mentioned should not be annexed to said district. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter.

Historical: Laws 1903, 150, Sec. 45;
amended Laws 1907, 484, Sec. 1.

California Legislation: Similar:
Henning's Gen. Laws, 584, Sec. 87.

Hearing of Petition.

Sec. 2426. The board of directors, at the time mentioned in said notice or at such other time to which the hearing may be adjourned, shall hear the petition and all the objections thereto, showing cause, as aforesaid. The failure of any person to show cause as aforesaid shall be taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands.

Historical: Laws 1903, 150, Sec. 46;
amended Laws 1907, 484, Sec. 46.

with additional provision: Henning's
Gen. Laws, 584, Sec. 88.

California Legislation: Similar

Assessment Against Petitioners.

Sec. 2427. The board of directors may require, as a condition to the granting of said petition, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated, as said petitioners, or their grantors, would have been required to pay to such district, had such lands been included in such district, at the time the same was originally formed.

Historical: Laws 1903, 150, Sec. 47;
amended Laws 1907, 484, Sec. 1.

California Legislation: Similar:
Henning's Gen. Laws, 584, Sec. 89.

Order Accepting or Rejecting Petition.

Sec. 2428. The board of directors, if they deem it not for the best interest of the district to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interest of the district, and if no person interested shall show cause why the proposed change be not made, or if having shown cause, withdraws the same, the board may order, without any election, that the lands mentioned in said petition or some part thereof be annexed to said district. The order shall describe the lands to be annexed to said district and the board may cause a survey thereof to be made if deemed necessary.

Historical: Laws 1903, 150, Sec. 48;
amended Laws 1907, 484, Sec. 1.

California Legislation: See Henning's Gen. Laws, 584, Sec. 90.

Same: Overruling Objections.

Sec. 2429. If any person interested shall show cause as aforesaid,

and shall not withdraw the same, and if the board of directors deem it for the best interests of the district to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the lands which the board are of the opinion should be included within the district.

Historical: Laws 1903, 150, Sec. 49;
amended Laws 1907, 484, Sec. 1.

California Legislation: Similar:
Henning's Gen. Laws, 585, Sec. 91.

Election to Determine Change.

Sec. 2430. Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held. Notice thereof shall be given and published, and such election shall be held, and all things pertaining thereto conducted, in the manner prescribed by this title in case of an election to determine whether bonds of the district shall be issued. The ballots cast at said election shall contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the lands to be annexed to said district.

Historical: Laws 1903, 150, Sec. 50;
amended Laws 1907, 484, Sec. 1.

California Legislation: Similar:
Henning's Gen. Laws, 585, Sec. 92.

Order Changing Boundaries.

Sec. 2431. If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall proceed no further in the matter. But if a majority of such votes be in favor of such change, the board shall thereupon order that the boundaries be changed in accordance with said resolution. The order shall describe the land so annexed to said district, and thereafter such land so annexed shall be subject to such assessments from time to time as the board of directors shall deem right under the circumstances, and such assessments shall be deemed to be assessments for benefits to said lands by reason of their annexation to said district. Immediately after the recording of the order annexing said lands to the district, the directors shall state on their minutes to which division and election precinct in said district the said lands so annexed shall be attached, and, if necessary, the board shall make an order redividing the district into divisions and election precincts, in the same manner and to like effect, as near as may be, as provided for that purpose on the formation of a district.

Historical: Laws 1903, 150, Sec. 51;
amended Laws 1907, 484, Sec. 1.

California Legislation: See Henning's Gen. Laws, 585, Sec. 93.

Order to Be Recorded.

Sec. 2432. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully and to every

intent and purpose, as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the original organization of the district.

Historical: Laws 1903, 150, Sec. 52.

California Legislation: Same: Henning's Gen. Laws, 585, Sec. 94.

Same: Record in Minutes.

Sec. 2433. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary of the board shall record in the minutes of the board, the petition aforesaid, and the said minutes, or a certified copy thereof, shall be admissible in evidence, with the same effect as the petition.

Historical: Laws 1903, 150, Sec. 53.

California Legislation: Same ex-

cept "of the board", line 2, omitted: Henning's Gen. Laws, 585, Sec. 95.

Exclusion of Land From District.

Sec. 2434. The holder or holders of any title to lands included within the boundary of an irrigation district may file with the board of directors of said district, a petition in writing, praying that the boundaries of said district may be so changed as to exclude the said lands described in said petition. The petition shall describe the boundaries of the several parcels owned by the petitioners; if the petitioners be the owners respectively of distinct parcels of land such petition must also state that the lands described in said petition are too high to be watered from water owned and controlled by said irrigation district. Said petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Historical: Laws 1905, 220, Sec. 1.

California Legislation: See Henning's Gen. Laws, 580, Sec. 75.

Survey of Land to Be Excluded.

Sec. 2435. The board of directors to whom such petition is presented, must cause the lands described in said petition to be surveyed by a competent irrigation engineer, and if found to be too high to receive any benefit from irrigation works of said district, said board must make an order changing the boundaries of said district so as to exclude the lands described in said petition.

Historical: Laws 1905, 220, Sec. 2.

Costs of Survey.

Sec. 2436. If upon a survey being made by order of the board of directors of lands described in the petition, it is found that said lands can be watered from irrigation works of said district, parties signing said petition shall be liable to the irrigation district for the full amount of costs incurred by said district in having the lands described in said petition surveyed.

Historical: Laws 1905, 220, Sec. 3.

Changes to Be Recorded.

Sec. 2437. Upon a change of the boundaries of a district being

made as provided in the three preceding sections. a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district as fully, and to every intent and purpose, as if the lands which are excluded from the district by the change of the boundaries as aforesaid had been excluded at the original organization of the district.

Historical: Laws 1905, 220, Sec. 4.
"As provided in the three preceding sections" inserted to confine the pro-

vision to the act from which the section was taken.

Consolidation of Districts.

Sec. 2438. Whenever the boards of directors of any two or more irrigation districts which are contiguous, deem it for the best interests of their respective districts that the same be consolidated into a single district, such boards of directors may petition the board of county commissioners for an order for an election, to vote upon the question of such consolidation, which petition shall state in detail the terms upon which such consolidation is proposed to be made. Upon receiving such petitions said board of county commissioners shall request the State Engineer to investigate the conditions of such districts, and all questions affecting such proposed consolidation, and he shall make a report of the result of such investigations to the board of county commissioners, not more than ninety days after such request is received. At the time said report upon the matter is made, said board of county commissioners, if deemed advisable, shall make an order fixing the time for an election in said districts to vote upon the question of such proposed consolidation, which time shall not be less than thirty nor more than sixty days after the date of said report. Notice of said election shall be published as required for notice of election in Section 2374 of this title; and the said boards of directors shall make all necessary arrangements for such election in their respective districts as provided in this title for other elections.

The ballot shall be substantially as follows: "Consolidation—Yes," "Consolidation—No." The said boards of directors shall canvass the returns of such election as provided in case of usual district elections, and shall immediately thereafter transmit, by messenger or registered mail, certified abstracts of the result of said election in their respective districts to the clerk of the board of county commissioners. Within ten days after such returns are received by said clerk, the said board of county commissioners shall meet and canvass the same. If it appears that a majority of all the votes cast in each of said districts is "Consolidation—Yes," said board shall make an order, and enter the same of record in its minutes, establishing said consolidated district, giving its boundaries and designation, and in detail the terms under which the consolidation has been effected. and dividing said consolidated district into three divisions, and shall appoint some person qualified under this title, to act as director for each of said divisions of said district until the next general election for the election of officers, when a board of directors shall be elected as provided in Section 2378: *Provided, however, That the organiza-*

tion of such district shall not take effect until the first Tuesday of the January following said order of its establishment.

If the date provided by law for the election of directors shall come between the date of said order of the board of county commissioners and said first Tuesday of January, then in making such order said board shall designate the board of directors of one of the consolidated districts as a board to take charge of said election, and a director shall in that case be elected for each said division of said consolidated district, and in that case no appointment of directors shall be made by said board of county commissioners. If, however, upon such canvass by said board of county commissioners, it appears that a majority of the votes cast in any district thus proposed to be consolidated is "Consolidation—No," then a record of that fact shall be entered in the same minutes of said board of county commissioners, and all the proceedings had under this section shall be void.

Historical: Laws 1903, 150, Sec. 56.

CHAPTER 8. MISCELLANEOUS PROVISIONS.

Section

- 2439. State lands included within irrigation districts.
- 2440. Navigation and mining industries not impaired.
- 2441. Publication of notices.

Section

- 2442. Other laws unaffected.
- 2443. Existing districts to be governed by this title.

State Lands Included Within Irrigation Districts.

Sec. 2439. No State lands included within any legally organized irrigation district shall ever be assessed, nor shall any of the preceding sections relative to the levying and collecting of assessments and taxes apply, but the State Board of Land Commissioners and the State Engineer shall make a thorough examination as to the benefits to accrue to such State lands by reason of the formation of such irrigation district, and by reason of the acquiring of water rights for said lands, and the State Board of Land Commissioners is hereby empowered to enter into a contract with the board of directors of such irrigation district, specifying by legal subdivisions the land so benefited, the amount of benefit to accrue to each piece of land, and such contracts shall provide that an annual payment shall be made each year out of the general fund to said board of directors, to be applied on the cost of constructing such irrigation works within said district, until the full amount of such benefit is paid; but the State Board of Land Commissioners shall have the option to pay the full amount of such contract at any time, upon any or all of such legal subdivisions: *Provided*, That said contract shall be subject to said irrigation district and works being properly managed and constructed, so that the benefits agreed upon shall accrue to said lands: *Provided, also*, That the county recorder of every county in which certificates of sale of any State lands for irrigation district taxes have heretofore been filed or recorded, shall cancel the same upon the records of said counties.

The amount of benefit so agreed upon shall be charged by the

State Board of Land Commissioners against said lands, and shall be paid as follows: Before any such land shall be offered for sale, the State Board of Land Commissioners shall cause said lands to be appraised, showing (1) the value of the land without any water right, ditches or other improvements effected or made by such district, and (2) the value of the water right, ditches and other improvements, or the proportion thereof pertaining to such lands and such legal subdivision, and said land shall be offered for sale and sold with said water right, ditches and other improvements included. Before the proceeds of such sale are deposited in the fund where they properly belong, the amounts of money paid by the State, or for which the State is held bound to pay, or such proportionate amounts where said lands are sold to be paid for in installments, shall be deducted from the said proceeds and placed in the general fund of the State, to reimburse the State for expenditures so made: *Provided*, That no reductions shall be made from said proceeds that shall reduce the same below the appraised value of said lands, or below the price of ten dollars per acre.

Historical: Laws 1903, 185, Sec. 59;
amended Laws 1905, 378, Sec. 1.

Navigation and Mining Industries Not Impaired.

Sec. 2440. Navigation shall never in any wise be impaired by the operation of this title, nor shall any vested interest in or to any mining water rights or ditches, or in or to any water or water rights, or reservoirs or dams now used by the owners or possessors thereof in connection with any mining industry, or by persons purchasing or renting the use thereof, or in or to any other property now used directly or indirectly in carrying on or promoting the mining industry, ever be affected by or taken under its provisions, save and except that rights of way may be acquired over the same.

Historical: Laws 1903, 150, Sec. 42.

California Legislation: Same: Henning's Gen. Laws, 578, Sec. 64.

Publication of Notices.

Sec. 2441. Wherever in this title any notice is required to be given by publication, it shall be satisfied by publishing the same in a weekly newspaper the same number of times consecutively as the number of weeks mentioned in the requirement. A ten days' notice shall be satisfied by two such publications, a twenty days' notice by three, and a thirty days' notice by five such publications.

Historical: Laws 1907, 484, Sec. 1;
amending, by adding Sec. 60A, Laws
1903, 150.

Other Laws Unaffected.

Sec. 2442. None of the provisions of this title shall be construed as repealing or in anywise modifying the provisions of any other act relating to the subject of irrigation or water distribution. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel, to the detriment of any person or persons having any

interest in such river, creek, stream, canal or ditch, or the water therein, unless previous compensation be ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public uses.

Historical: Laws 1903, 150, Sec. 43. Omitting "except as provided in section 61 of this act." That section repealed the 1899 district law, which is omitted from these Codes.

California Legislation: Same, omitting the first sentence: Henning's Gen. Laws, 578, Sec. 65.

Existing Districts to Be Governed by This Title.

Sec. 2443. All irrigation districts heretofore organized under any of the laws of this State shall hereafter be governed in all respects by the provisions of this title.

Historical: Laws 1903, 150, Sec. 60.

TITLE 15

DRAINAGE DISTRICTS

Chapter

1. Organization of district.
2. Board of drainage commissioners.
3. Proceedings for assessment of damage.

Chapter

4. Construction of drainage system.
5. Issuance of bonds and warrants.
6. Miscellaneous provisions.

CHAPTER 1.

ORGANIZATION OF DISTRICT.

Section

2444. Territory may be organized into drainage district.
2445. Petition for formation of district.
2446. Action on petition.

Section

2447. District election.
2448. Qualifications of voters: Order establishing district: Bond of commissioners.

Territory May Be Organized Into Drainage District.

Sec. 2444. Any portion of a county requiring drainage, which contains five or more inhabitants and freeholders therein, may be organized into a drainage district, and when so organized such district and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred by law upon such district and board of commissioners, and said district shall be known and designated as "Drainage District No. (here insert number), of the County of (here insert the name of the county), of the State of Idaho," and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such drainage district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties and perform such other acts as hereinafter provided, or that may hereafter be provided by law.

Historical: Laws 1903, 256, Sec. 1.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3715.

Petition for Formation of District.

Sec. 2445. For the purpose of the formation of such drainage district, a petition shall be presented to the board of county commissioners of the county in which said proposed district is located, which petition shall set forth the object for the creation of said district, shall designate the boundaries thereof, and set forth therein approximately the number of acres of land to be benefited by the

proposed drainage system, and shall also contain the names of all the freeholders residing within said proposed district (so far as known), and shall contain a brief description of the proposed system of drainage, designating the point or points which shall be the outlet or outlets for the drainage of said district, the route over which the same is to be constructed, together with the proposed spurs or branches, if any there may be, and the termini thereof; and set forth the further fact that the establishment of said district and the proposed system of drainage will be conducive to either the public health, convenience or welfare or increase the public revenue; or that the establishment of said district and said system of drainage will be of special benefit to the majority of the lands in acreage included therein. Said petition shall be signed by such a number as own at least a majority of the acreage in the proposed district, and shall pray that the same be organized under the provisions of this title. Said petitioners shall, at the time of the filing of said petition, file a bond with said commissioners, running to the State of Idaho, in the penal sum of five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established.

Historical: Laws 1903, 256, Sec. 2;
amended Laws 1907, 98, Sec. 1.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3716.

Action on Petition.

Sec. 2446. Such petition shall be presented at a regular or special meeting of the board of county commissioners of said county, and shall be published for at least three successive issues in some weekly newspaper printed and published in said county, and nearest said land; and in case no such newspaper be printed or published in said county, then in some newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same shall be presented. When such a petition is presented for hearing, the board of county commissioners shall hear the same, or may adjourn said hearing from time to time not exceeding one month in all, and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon the final hearing said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land that will be benefited by said proposed drainage system, the number of freeholders residing within said boundaries of said proposed district, and shall find whether the proposed drainage system will be conducive to either the public health, welfare or convenience, or increase the public revenue, or be of special benefit to the majority of the lands included within said boundaries of the said proposed district so established by said board of county commissioners: *Provided*, That no changes shall be made by said board of county commissioners in said boundary lines so as to include any territory outside of the boundaries described in said petition: *Provided, further*, That any person or persons owning land within

the proposed boundaries and who did not sign said petition, or any person, persons or corporations owning land not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reasons therefor: *Provided, however,* That no person, persons or corporations not owning lands included within the proposed boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: *Provided, further,* That any corporation owning land included within the boundaries described in the original petition, may also petition the board of county commissioners for an extension of the proposed boundaries. In such case the board of county commissioners shall give the right notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may, in such case, be continued from time to time for a period not exceeding sixty days, and if upon final hearing the board of county commissioners deem it advisable and for the best interests of all concerned, they may grant the prayer of such petitioner or petitioners in whole or in part. Any district may be established even though it is shown that an outlet for the drainage thereof is without the county in which such district is located, or without the boundaries of the State of Idaho, or is in any other State or Territory, or is in a foreign country, and work for the drainage of such district may be contracted for and performed either entirely or partly within the limits of such district or said State, or entirely or partly within the limits of any other State, Territory or foreign country. And the said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence on the final hearing thereof.

Historical: Laws 1903, 256, Sec. 2;
amended Laws 1907, 98, Sec. 2.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3717.

District Election.

Sec. 2447. Upon the entry of the findings on the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed drainage system will be conducive to either the public health, welfare or convenience, or will increase the public revenue, or be of special benefit to the majority in acreage of the lands included within said boundaries, shall give notice of an election to be held in such proposed drainage district for the purpose of determining whether the same shall be organized under the provisions of this title as a drainage district of the State of Idaho, and for the further purpose of choosing at such election three commissioners who shall be known and designated "Drainage Commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said drainage district; and such notice shall particularly describe the boundaries as established by the board of county commissioners on its final hearing of said petition, and shall state the name of such proposed drainage district, and approxi-

mately the number of acres of land in said district to be benefited thereby, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published therein, then in some newspaper of general circulation therein, for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district; such notice shall designate the place within the proposed district where the election shall be held, and require the voters to cast ballots which shall contain the words "Drainage District—Yes," or "Drainage District—No," and also the names of the persons voted for for commissioners of said drainage district. The board of county commissioners shall also appoint two judges, one inspector, and two clerks for such elections, whose compensation shall be the same as in other elections of county and State officers, and shall be a charge upon said district, in case the same be established, and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectible on the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon.

Historical: Laws 1903, 256, Sec. 4;
amended Laws 1907, 98, Sec. 3.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3718.

Qualifications of Voters: Order Establishing District: Bond of Commissioners.

Sec. 2448. Such election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the State of Idaho, and at such election and all succeeding elections under this title, every natural person of legal age, who is the bona fide owner of forty acres or a smaller tract of real estate within the limits of such district as established by the board of county commissioners, shall be entitled to one vote, and such person shall be entitled to an additional vote for each forty acres of real estate owned as aforesaid in excess of the first forty acres; but if it be found that the foregoing provisions in this section as to qualifications of voters are invalid, then such qualifications shall be as follows: Every natural person of legal age who is a bona fide owner of real estate within the limits of said district, as established by said board of county commissioners shall be entitled to one vote. The board of county commissioners shall meet on the Monday next succeeding such election, and proceed to canvass the votes cast for it, and if upon such canvass it appears that a majority of the votes cast are for "Drainage District—Yes", the board shall have an order entered upon their minutes, and declare such territory duly organized as "Drainage District No. (here insert number), of (here insert name of county), of the State of Idaho," and shall declare the three persons receiving respectively the highest number of votes to be duly elected as a board of commissioners of such drainage district. Said board shall cause a copy of said order, duly certified, to be filed in the office of the Secretary of State, and from and after the date of such filing, such organization shall be deemed complete. and such board of commissioners so chosen at such election shall be entitled

to enter upon the duties of their office, and upon qualifying as county officers are required to qualify, and giving a bond to the State of Idaho for the benefit of said drainage district, for the faithful performance of their duties as such board of drainage commissioners, in the penal sum of five thousand dollars, with two or more sureties, to be approved by the board of county commissioners, shall hold office until the next general election for the election of officers in such drainage district, and until their successors are elected and qualified. Each board of commissioners thereafter which may be constituted either by appointment or election, shall enter into a like bond and of like effect before entering upon their duties, which bond shall be approved by the Judge of the District Court of the county in which said district is located, and shall be filed in said Court.

Historical: Laws 1903, 256, Sec. 5;
amended Laws 1907, 98, Sec. 4.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3719.

CHAPTER 2.

BOARD OF DRAINAGE COMMISSIONERS.

Section	Section
2449. Election of board of commissioners.	2452. Commissioners to have charge of construction: Filling vacancies.
2450. Officers of board: District warrants.	
2451. Compensation of commissioners.	

Election of Board of Commissioners.

Sec. 2449. A general election for the election of a board of drainage commissioners of such district shall be held upon the first Tuesday after the first Monday in December of each year thereafter, and the term of office shall begin the second Monday of the following January, and such election shall be held in accordance with the general election laws of the State of Idaho for the election of county and State officers, and the expenses thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of two dollars per day: *Provided*, That at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such drainage district, by posting the same in four public places within said district. Said notice shall contain the names of two electors of said district as judges of said election, and the name of one elector of said district as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall be a canvassing board to canvass the vote of each election, and they shall meet the day following such election and canvass said votes, and declare the result thereof and issue certificates of election.

Historical: Laws 1903, 256, Sec. 6.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3720.

Officers of Board: District Warrants.

Sec. 2450. The board of commissioners of such district shall elect

one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district, in payment of claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: *Provided*, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value.

Historical: Laws 1903, 256, Sec. 25.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3739.

Compensation of Commissioners.

Sec. 2451. In performing their duties under the provisions of this title, the board of drainage commissioners shall receive such compensation as may be just and reasonable for all necessary services actually performed, not exceeding two dollars per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either or all of such board, that the same is just, reasonable, necessary and that the services were actually performed, and that no part of the same has ever been paid, and in case such services are rendered by said board in the establishment or construction of said improvement, or any extension thereof, the amount thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: *Provided*, That any person interested therein may file objections to the allowance asked for, either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereof. Said board of commissioners, or the member thereof presenting such claim or allowance, shall, at the time of the filing thereof in the court, post notices in at least four public places within said district, which said notices shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof, and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of such claims or any portion thereof, within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any there be, made and filed, and shall, in its discretion, make such allowance in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid.

Historical: Laws 1903, 256, Sec. 38. "That the services" inserted before "were actually performed," line 8, to complete the sense.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3752.

Commissioners to Have Charge of Construction: Filling Vacancies.

Sec. 2452. Said board of drainage commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all drainage systems which heretofore have been or hereafter may be organized under the provisions of this title, and shall be the executive officers thereof, with full power to bind such districts by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by death, failure to elect, failure to qualify, or resignation of one or more of the members thereof, such vacancy or vacancies shall be filled at once, from among those qualified to vote, under this title at elections held in said district, by the Judge of the District Court of said county in which said district is located, and said appointee shall serve the unexpired term, or until the next general election: *Provided*, That in counties where there may be more than one District Judge, the Judge eldest in age shall make such appointment.

Historical: Laws 1903, 256, Sec. 8;
amended Laws 1907, 98, Sec. 6.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3722.

CHAPTER 3.

PROCEEDINGS FOR ASSESSMENT OF DAMAGE.

Section	Section
2453. Petition.	2459. Payment of damages.
2454. Employment of surveyors.	2460. Assessment of benefits.
2455. Summons.	2461. Assessment to pay judgment of dismissal.
2456. Statutes governing procedure.	2462. Trial of issues by jury.
2457. Appeal.	
2458. Dismissal of proceedings.	

Petition.

Sec. 2453. Whenever it is desired to undertake the drainage of any district, such district, by and through its board of commissioners, shall file a petition in the District Court of the county in which said district is located, setting forth therein the name of the drainage district and the route and termini of said system, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, together with the estimated cost of such proposed improvement and the amount or proportion of said cost which will be paid or assumed by such district; and said petition shall also show the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner; and approximately the amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvements, and that the same will be conducive to either the public health, convenience or welfare, or increase the value of said property for the purpose of public revenue. Said petition shall further set forth the names of the land owners through whose land the right of way is desired for said improvement, the amount of land necessary to be taken therefor, a description of said land, an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason

of such appropriation, irrespective of any benefits to be derived by such land owners by reason of the construction of said improvement; such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of drainage is necessary to drain said lands described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvements: *Provided, however,* That all maps, plats, field notes, surveys, plans, specifications, or other data hereinbefore made, ascertained or prepared under laws heretofore enacted on the subject of this title, may be used under the provisions of this title.

Historical: Laws 1903, 256, Sec. 9;
amended Laws 1907, 98, Sec. 7.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3723.

Employment of Surveyors.

Sec. 2454. In the preparation of the facts and data to be inserted in said petition and filed therewith, for the purpose of presenting the matter to the District Court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit.

Historical: Laws 1903, 256, Sec. 10.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3724.

Summons.

Sec. 2455. A summons shall be issued stating briefly the objects of the petition, and containing a description of the land, real estate, premises, or property sought to be appropriated, and the names of the owners thereof, appearing of record, and of all those having any interest appearing of record therein, and the names of those who it is claimed will be benefited by such improvements, and stating the name of the court wherein said petition is filed, the date of the filing thereof, and a direction to the defendants to appear and answer the petition within the same time and in the manner provided by law in the case of civil actions, and service and return of said summons shall be had as provided by law in the case of civil actions.

Historical: Laws 1903, 256, Sec. 11;
amended Laws 1907, 98, Sec. 8.

actions: Sec. 4140. Service of sum-
mons: Sec. 4144.

Cross Reference: Summons in civil

Statutes Governing Procedure.

Sec. 2456. The procedure in such cases shall be the same as that

in the cases provided for in Title 7 of Part 3 of the Code of Civil Procedure, being the title concerning eminent domain, except as in this title otherwise provided. In addition to the matters set forth in Section 5220 of Title 7 of Part 3 of the Code of Civil Procedure, the court or jury shall find the amount of benefits per acre to be derived by each of the land owners within said drainage district from the construction of said improvements. In case jurors are required, they shall be selected and summoned in the manner provided for the selection and summoning of persons to serve as jurors in the District Court by Title 3 of Part 1 of the Code of Civil Procedure: *Provided*, That the parties to the proceedings may agree upon a number of jurors less than twelve, such number to be not less than three: *Provided, further*, That no person shall be competent to act as a juror who is a resident of, or land owner in, the drainage district which is seeking to appropriate the land in question. Notice of pendency of the action may be filed for record in the same office, and in the same manner and form, and with the same effect, as set forth in Section 4142 of these Codes.

Historical: Laws 1903, 256, Sec. 12;
amended Laws 1907, 98, Sec. 9. Ref-

erences changed to conform to these
Codes.

Appeal.

Sec. 2457. Every person or corporation feeling himself or itself aggrieved by the judgment for damages, or the assessments of benefits, may appeal to the Supreme Court of this State, within thirty days after the entry of the judgment, and such appeal shall bring before the Supreme Court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed.

Historical: Laws 1903, 256, Sec. 13.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3727.

Dismissal of Proceedings.

Sec. 2458. In case the plaintiff, the drainage district, shall not prove a proper case to entitle it to judgment in its favor, the court shall dismiss such proceedings, and in such case judgment shall be rendered for the cost of said proceedings against said district, and no further proceedings shall be had or done therein.

Historical: Laws 1903, 256, Sec. 14;
amended Laws 1907, 98, Sec. 10.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3728.

Payment of Damages.

Sec. 2459. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this title, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he be entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found, entitled to; but, if upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to

determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law.

Historical: Laws 1903, 256, Sec. 15.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3729.

Assessment of Benefits.

Sec. 2460. Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript which shall contain a list of the names of all the persons and corporations benefited by said improvement, and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes, and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption, as the sale of lands for general taxes: *Provided*, That said assessment shall not become due and payable except at such time or times, and in such amounts, as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to the benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith: And *Provided further*, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and drainage system and the cost of construction of said work.

Historical: Laws 1903, 256, Sec. 16.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3730.

Assessment to Pay Judgment of Dismissal.

Sec. 2461. In the event of the dismissal of said proceedings and the rendition of judgments against said district, as hereinbefore provided, said drainage commissioners shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for State and county purposes, sufficient to pay said judgment and the cost of levying said tax, and shall cause said tax roll to be filed in the office of the clerk of the District

Court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purpose; and the same right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes.

Historical: Laws 1903, 256, Sec. 17.
Comparative Legislation: See Washington: Bal. An. Code, Sec. 3731.

Trial of Issues by Jury.

Sec. 2462. Upon the trial of any questions of issue by a jury under the provisions of this title the court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein.

Historical: Laws 1903, 256, Sec. 34.
Comparative Legislation: See Washington: Bal. An. Code, Sec. 3748.

CHAPTER 4.

CONSTRUCTION OF DRAINAGE SYSTEM.

Section	Section
2463. Contract and bond for construction.	2467. Connection of district with lower district.
2464. Change of route: Assessment of damages.	2468. Apportionment of cost of maintenance.
2465. Payment for work.	2469. Water course as part of system.
2466. Connection by private drains.	

Contract and Bond for Construction.

Sec. 2463. After the organization of any drainage district, the commissioners of such drainage district shall proceed as soon as they may deem expedient in the construction of said improvements; and in carrying on said construction or any extensions thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary and purchase all materials that may be necessary in the construction and carrying on of the work of said improvements, and shall have power to let the whole or any portion of said work to any responsible contractor; and shall in such case enter into all agreements with such contractor that may be necessary in the premises: *Provided*, That in case the whole or any portion of said improvements is let to any contractor, said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole, or of the portion of said works covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district, and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said

contractor to enter into a further additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said drainage district, in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or sub-contractor, or any employee thereof in the construction of said improvement. Provided, further, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvements, file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district.

Historical: Laws 1903, 256, Sec. 18;
amended Laws 1907, 98, Sec. 11.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3732.

Change of Route: Assessment of Damages.

Sec. 2464. The work on said improvement shall begin at a point or at points to be determined by said commissioners, and said work shall be completed with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change such route or system of improvements or the manner of doing the work therein so as to make any radical changes in said improvements, without the written consent of all the land owners to be benefited thereby, and of the land owners who may be damaged thereby. In case any substantial changes in said system of improvement, or the manner and construction thereof, shall be deemed necessary by said board of commissioners at any time during the progress thereof, and the written consent to such changes cannot be procured from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the District Court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof the court shall cause a summons to be served, setting forth the prayer of said petition under the seal of the said court, which summons shall be served in the same manner as the service of summons in the case of the original petition. upon all the land owners or others having any lien or interest therein appearing of record in said district, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in

the original proceedings, may call a jury to be impanelled in the manner provided by Title 3 of Part 1 of the Code of Civil Procedure, and upon the final hearing of said cause the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition, by reason of such proposed change, and the amount of compensation to be paid to any person or corporation therefor, and for any additional right of way that may be necessary to be appropriated.

Historical: Laws 1903, 256, Sec. 19;
amended Laws 1907, 98, Sec. 12.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3733.

Payment for Work.

Sec. 2465. During the construction of said improvement said commissioners shall have the right to allow payment thereof in installments as the work progresses, in proportion to the amount of work completed: *Provided*, That no allowance or payment shall be made for said work to any contractor or sub-contractor to exceed seventy-five per cent of the proportionate amount of the work completed by such contractor or sub-contractor, and twenty-five per cent of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements. Upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor.

Historical: Laws 1903, 256, Sec. 20.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3734.

Connection by Private Drains.

Sec. 2466. Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any person or corporation shall desire to drain such lands into said system, and shall find it necessary, in order to do so, to procure the right of way over the land of another, or others, and if consent thereto can not be procured from such person or persons, then such land owner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the District Court, for and in the name of said drainage district, requesting, in said petition, that said system be extended as requested, setting forth therein the necessity thereof and praying that leave be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition

for the establishment of the original system of drainage in said district, as far as applicable. The costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right of way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: *Provided*, That such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district, in the full penal sum of five hundred dollars with two or more sureties to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause.

Historical: Laws 1903, 256, Sec. 21.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3735.

Connection of District With Lower District.

Sec. 2467. In case of the establishment of a drainage district and system of drainage under the provisions of this title above any other district that may theretofore have been established, and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, the latter district shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the District Court for the establishment of the system of drainage in said upper district shall, in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be a sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore provided for in this title. All the land owners in said lower district, or any person claiming any interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury,

in addition to the facts to be found by them as provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before considering any other question at issue in said proceedings, and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then, in that case, said finding shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceedings shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper district may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein. All costs for the enlarging or improving of said lower system that may be required, shall be assessed to the land owners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right of way that may be necessary to be taken in enlarging said lower system, and all damages occurring therefrom, if any, to the land owners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for the adjustment of compensation and damages in the establishment of drainage systems in lower districts. Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance of said lower system as improved and enlarged, and such fact shall be determined in said cause, and the jury shall find the amount of the increased costs of maintenance per annum, which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such amount as found, and the same shall be paid each year as the cost of construction is paid as provided for in this title, and the amount so paid shall be held by said lower district as an additional fund for the maintenance of its said system, as improved and enlarged by said upper district.

Historical: Laws 1903, 256, Sec. 22. The words "the latter district," in line 7, and "and no further proceedings," in line 38, are inserted to complete the sense as indicated by the context.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3736.

Apportionment of Cost of Maintenance.

Sec. 2468. The board of commissioners of any drainage district organized under the provisions of this title shall, on or before the first day of January of each year, make an estimate of the cost of maintenance of the drainage system constructed in such district, which estimate shall include the costs of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be made for the succeeding year,

and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located on or before said date, and the amount thereof shall be apportioned to the land owners in such district benefited by said improvement in proportion to the maximum benefits originally assessed, and such amount shall be added to the general taxes of such land owners and collected therewith.

Historical: Laws 1903, 256, Sec. 24.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3738.

Water Course as Part of System.

Sec. 2469. The whole or any portion of any natural water course, which drains any district established under this title, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this title, may be improved and completed as a system under the provisions of this title: *Provided*, That in the improvement of any natural water course the rights of the public therein for the purpose of navigation shall not be in any wise impaired.

Historical: Laws 1903, 256, Sec. 39; amended Laws 1907, 98, Sec. 14.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3753.

CHAPTER 5.

ISSUANCE OF BONDS AND WARRANTS.

Section	Section
2470. Issuance of bonds for construction work.	2474. Payment of bonds.
2471. Form of bonds.	2475. Assessment for payment of coupons.
2472. Exchange of bonds for warrants.	2476. Registration of bonds.
2473. Assessment to liquidate bonds.	2477. Presentation of warrants for payment.

Issuance of Bonds for Construction Work.

Sec. 2470. Upon the establishment of any drainage district under the provisions of this title, and the establishment of a system of drainage therein as provided for in this title, the board of commissioners of such drainage district are hereby authorized to issue bonds to pay for the total cost of the work and improvements incurred or to be incurred, or of the part of the work and improvements assumed or contracted for, or to be assumed or contracted for, together with the costs of the organization of said district and the establishment thereof, including damages assessed and compensation made or to be made to land owners for right of way, and the expenses and costs of the entire proceeding, payable at a time not less than five years nor longer than twenty years from the date thereof. Such commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district. In case of such last named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be

issued by him. Such call shall be made by said treasurer, immediately upon the receipt of the proceeds from the sale of said bonds, by publication for two successive weeks in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication: *Provided*, That no bonds shall, under the provisions hereof, be sold for less than their par value.

Historical: Laws 1903, 256, Sec. 26;
amended Laws 1907, 98, Sec. 13.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3740.

Form of Bonds.

Sec. 2471. Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than twenty years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of drainage commissioners, and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons.

Historical: Laws 1903, 256, Sec. 27.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3741.

Exchange of Bonds for Warrants.

Sec. 2472. Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds.

Historical: Laws 1903, 256, Sec. 28.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3742.

Assessment to Liquidate Bonds.

Sec. 2473. Five years before said bonds shall become due, the drainage commissioner of such district issuing them are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity. Such assessment shall be collected by the county assessor and ex-officio tax collector, and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section.

Historical: Laws 1903, 256, Sec. 29;
amended Laws 1905, 227, Sec. 1.

Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3743.

Payment of Bonds.

Sec. 2474. It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he is able to pay with the funds in his hands, to

be paid in numerical order of said bonds, beginning with the bond number one, until all of said bonds are paid: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said bonds, said bonds shall cease to bear interest, which shall be stated in the notice.

Historical: Laws 1903, 256, Sec. 30.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3744.

Assessments for Payment of Coupons.

Sec. 2475. It shall be the duty of such drainage commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this title, and, when presented to the county treasurer, and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid.

Historical: Laws 1903, 256, Sec. 31.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3745.

Registration of Bonds.

Sec. 2476. Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose, and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer.

Historical: Laws 1903, 256, Sec. 32.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3746.

Presentation of Warrants for Payment.

Sec. 2477. All warrants issued under the provisions of this title shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon in case of non-payment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this title until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said

notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement.

Historical: Laws 1903, 256, Sec. 33.
Comparative Legislation: See Wash-
ington: Bal. An. Code, Sec. 3747.

CHAPTER 6.

MISCELLANEOUS PROVISIONS.

Section	Section
2478. General Powers of drainage districts.	2481. Same: Assessments against public lands.
2479. Cities may act as drainage districts.	2482. Fees for service of process.
2480. Public lands subject to title.	2483. District Court may enforce title.

General Powers of Drainage Districts.

Sec. 2478. All drainage districts organized under the provisions of this title shall have the right of eminent domain, with power by and through their boards of commissioners, to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system of drainage, and to make just compensation therefor; to employ engineers and such other assistants as may be necessary; to survey, plan, locate and estimate the cost of the works necessary for the reclamation of the lands of the district; to acquire and to hold by purchase, condemnation or other legal means, the right of way and the right to take material for the construction of all works necessary for the accomplishment of that object, including drains, canals, sluices, bulkheads, water gates, levees and embankments; and to construct and maintain and keep in repair all works requisite and necessary to that end. For the purpose of the drainage of any such district, the whole or any portion of any natural water course or river, which drains such district, may be diked, improved, enlarged, widened, deepened or straightened, or any natural obstruction may be removed therefrom. Said board of drainage commissioners shall have power to provide, by contract, for the performance and payment of all or any portion of the work requisite or necessary for the drainage of the lands included within the limits of such district, or to enter into any contract whereby all or any portion of the cost of such work shall be paid, assumed or undertaken by such district, and to do all things requisite or necessary for the drainage of said lands. Work for the drainage of said lands may be performed either entirely or partly within the limits of such district, or of the county in which such district is located, or entirely or partly within or without the boundaries of any other county, State, Territory or foreign county: *Provided*, That the property or private corporations may be subjected to the same rights of eminent domain as that of private individuals: *Provided, further*, That the said board of commissioners shall have power to acquire by purchase all the real property necessary to make the improvements herein provided for.

Historical: Laws 1903, 256, Sec. 7; amended Laws 1907, 98, Sec. 5.	Comparative Legislation: See Wash- ington: Bal. An. Code, Sec. 3721.
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Cities May Act as Drainage Districts.

Sec. 2479. Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions of this title, or the whole of any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein.

Historical: Laws 1903, 256, Sec. 23.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3737.

Public Lands Subject to Title.

Sec. 2480. All State, county, school district or other lands belonging to other public corporations requiring drainage shall be subject to the provisions of this title, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the rights of eminent domain the same as the lands of private persons or corporations.

Historical: Laws 1903, 256, Sec. 35.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3749.

Same: Assessments Against Public Lands.

Sec. 2481. In case lands belonging to the State, county, school district, or other public corporations are benefited by any improvement instituted under the provisions of this title, all benefits shall be assessed against said lands, and the same shall be paid by the proper authorities of such public corporations at the time, and in the same manner, as assessments are called and paid in cases of private persons, out of any general fund of such corporations.

Historical: Laws 1903, 256, Sec. 36.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3750.

Fees for Service of Process.

Sec. 2482. Fees for service of all process necessary to be served under the provisions of this title, shall be the same as for like services in other civil cases, or as is or may be provided by law.

Historical: Laws 1903, 256, Sec. 37.

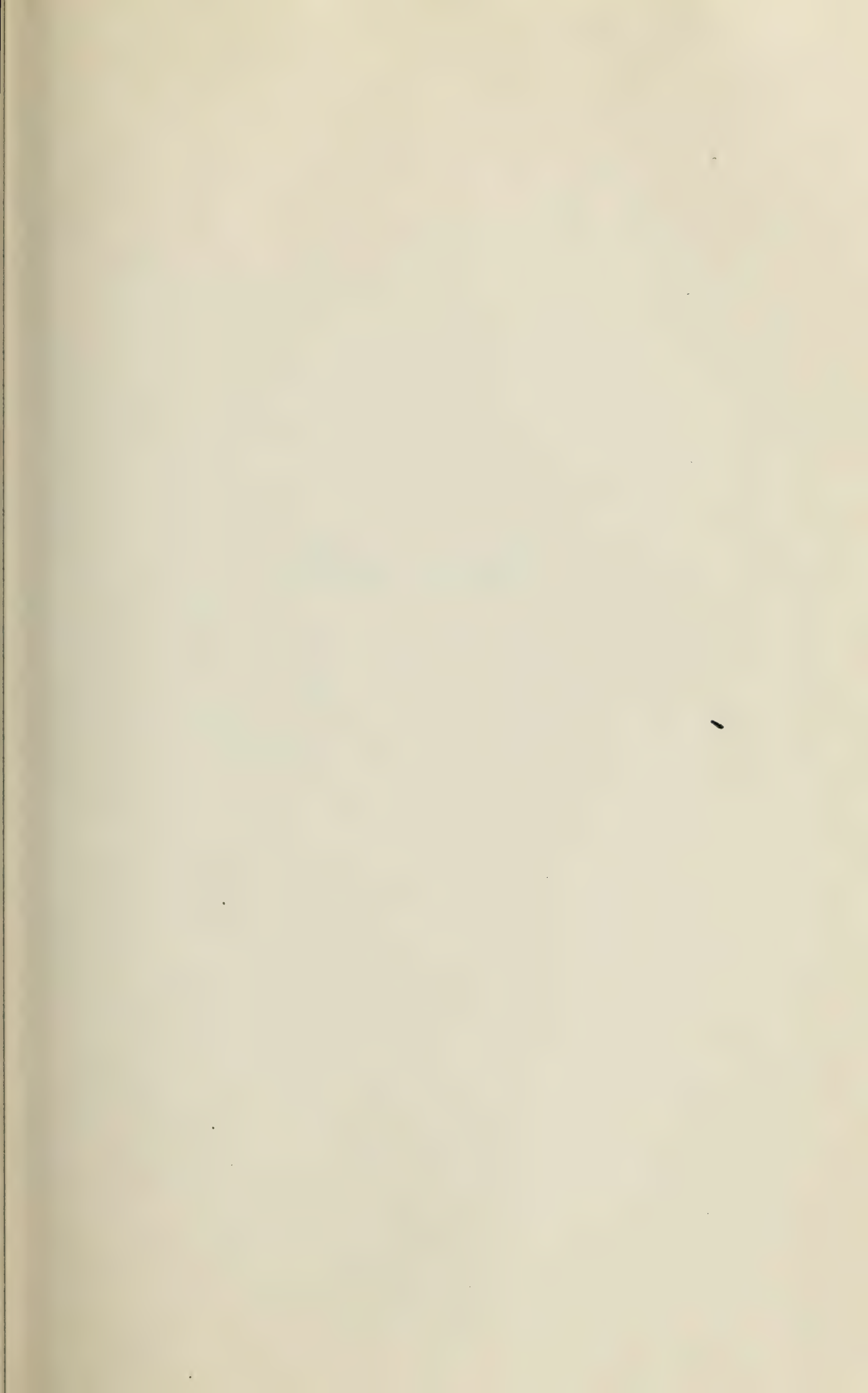
Comparative Legislation: See Washington: Bal. An. Code, Sec. 3751.

District Court May Enforce Title.

Sec. 2483. The District Court may compel the performance of the duties imposed by this title, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose.

Historical: Laws 1903, 256, Sec. 40.

Comparative Legislation: See Washington: Bal. An. Code, Sec. 3754.



CIVIL CODE

PART THIRD---CIVIL

CIVIL CODE

PRELIMINARY PROVISIONS.

Section

2600. Name of Code.

Name of Code.

Sec. 2600. Part Second of the Revised Codes shall be known as the Civil Code of the State of Idaho, and whenever cited, enumerated, referred to or amended, may be designated simply as the Civil Code, adding, when necessary, the number of the section.

Historical: Rev. St. 1887, Sec. 2400.
California Legislation: See Civ. Code

1872, Sec. 1; Deering's Code, ib.;
Kerr's Code, ib.

TITLE 1

PERSONS

Section

2601. Minors defined.
2602. Unborn child an existing person.
2603. Contracts of minors: Disaffirmance.
2604. Same: Contracts for necessities.
2605. Same: Contracts authorized by statute.

Section

2606. Contracts of idiots.
2607. Contracts of insane persons.
2608. Same: After adjudication of incapacity.
2609. Aliens: Rights to acquire land.
2610. Same: Mining claims.

Minors Defined.

Sec. 2601. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

Historical: Rev. St. 1887, Sec. 2405.
See 1 Ter. Ses. (1864) 515.

California Legislation: Same: Civ.

Code 1872, Sec. 25; Deering's Code, ib.; Kerr's Code, ib.

Unborn Child as Existing Person.

Sec. 2602. A child conceived, but not yet born, is to be deemed an existing person so far as may be necessary for its interests, in the event of its subsequent birth.

Historical: Rev. St. 1887, Sec. 2406.
California Legislation: Same: Civ.
Code 1872, Sec. 29; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Inheritance by posthumous children: Sec. 3064.

Contracts of Minors: Disaffirmance.

Sec. 2603. In all cases other than those specified in the next two sections, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent.

Historical: Rev. St. 1887, Sec. 2407.
California Legislation: Different.
Civ. Code 1872, Sec. 35; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Minor may make marriage settlement: Sec. 2693.

Same: Contracts for Necessaries.

Sec. 2604. A minor cannot disaffirm a contract otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

Historical: Rev. St. 1887, Sec. 2408.

California Legislation: Same except "or a person of unsound mind of whatever degree" inserted after

"minor", line 1, and "or them", last words, omitted: Civ. Code 1872, Sec. 36; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Same: Contracts Authorized by Statute.

Sec. 2605. A minor cannot disaffirm an obligation otherwise valid, entered into by him under the express authority or direction of a statute.

Historical: Rev. St. 1887, Sec. 2409.

California Legislation: Same: Civ. Code 1872, Sec. 37; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Minors may hold and transfer stock in land and building corporations: Sec. 3055.

Contracts of Idiots.

Sec. 2606. A person entirely without understanding has no power to make a contract of any kind but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

Historical: Rev. St. 1887, Sec. 2410.

California Legislation: See Civ. Code 1872, Sec. 38; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Liability for Necessaries: A person entirely without understanding has no

power to make a contract of any kind, but is liable for the reasonable value of necessities furnished to him for his support or for the support of his family, *Ratliff v. Baltzer's admr.* (1907) 13 Ida.; 89 Pac. 71.

Contracts of Insane Persons.

Sec. 2607. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission.

Historical: Rev. St. 1887, Sec. 2411.

California Legislation: Same except "as provided in the chapter on rescission of this Code" added: Civ. Code 1872, Sec. 39; Deering's Code, ib.; Kerr's Code, ib.

Contracts of Insane Persons: Where it is made to appear that a person is insane upon one subject, his contracts in regard to other matters will be scrutinized closely by the court when their validity and his competency to make them are questioned. *Ratliff v. Baltzer's admr.* (1907) 13 Ida.; 89 Pac. 71.

A conveyance or other contract made by a person who is of unsound mind but who is not entirely without understanding, and before his incapacity has been judicially determined is not absolutely void but is only voidable and subject to rescission. *Ib.*

A contract made by a person of defective mind but not entirely without understanding, who comprehends the full force and effect of such contract and upon whom no fraud or deception has been practiced, will not be rescinded. *Ib.*

Same: After Adjudication of Incapacity.

Sec. 2608. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

Historical: Rev. St. 1887, Sec. 2412.

California Legislation: Same in part: Civ. Code 1872, Sec. 40; same

as amended: Deering's Code, ib.; Kerr's Code, ib.

Aliens: Right to Acquire Land.

Sec. 2609. No person other than a citizen of the United States, or one who has declared his intention to become such, nor any association or corporation, except railway corporations, whose members are not exclusively citizens of the United States, or persons who have declared their intention to become such, shall hereafter acquire any land, or title thereto, or interest therein, other than mineral lands, or such as may be necessary for the actual working of mines and the reduction of the products thereof: *Provided*, That no person not eligible to become a citizen of the United States shall acquire title to any land or real property within this State, except as hereinafter provided: *Provided, further*, This section shall not prevent the holders (whether aliens or non-residents, corporations or associations) of liens upon real estate, or any interest therein, heretofore or hereafter acquired, from holding or taking a valid title to the real estate in the enforcement of such lien; nor shall it prevent any such alien, association or corporation from enforcing any lien or judgment for any debt or liability now existing, or which may be hereafter created, nor from becoming a purchaser at any sale made for the purpose of collecting or enforcing the collection of such debt or judgment; nor from preventing widows or heirs who are aliens, or who have not declared their intention to become citizens, from holding lands by inheritance; but all lands acquired as aforesaid shall be sold within five years after the title thereto shall be perfected in such alien, association or corporation, and in default of such sale, within such time such real estate shall revert and escheat to the State of Idaho. The provisions of this section shall not be construed in any way to prevent or interfere with the ownership of mining land, or land necessary for the working of mines or the reduction of the products thereof.

Historical: Laws 1899, 70, Sec. 1; re-enacting Laws 1890-91, 108, Sec. 1.

Cross Reference: Employment of aliens on public works: Secs. 1457-1460.

Cited: Buckley v. Fox (1902) 8 Ida. 248; 67 Pac. 659.

Same: Mining Claims.

Sec. 2610. Any person, whether citizen or alien (except as hereinafter provided), natural or artificial, may take, hold and dispose of mining claims and mining property, real or personal, tunnel rights, mill sites, quartz mills and reduction works used or necessary or proper for the reduction of ores, and water rights used for mining or milling purposes, and any other lands or property necessary for the working of mines or the reduction of the products thereof: *Provided*, That Chinese, or persons of Mongolian descent not born in the United States, are not permitted to acquire title to land or any real property under the provisions of this and the preceding sections.

Historical: Laws 1899, 70, Sec. 2; re-enacting Laws 1890-91, 118, Sec. 1.

Actions to Quiet Title: In an action to quiet title to a mining claim, it is not necessary to allege citizenship of the plaintiff, as this need only be done

in actions in support of an adverse claim or on application for a patent under U. S. Rev. St. Sec. 2326. Buckley v. Fox (1902) 8 Ida. 248; 67 Pac. 659.

TITLE 2

MARRIAGE

Chapter

1. The contract of marriage.
2. Divorce.

Chapter

3. Husband and wife.

CHAPTER 1.

THE CONTRACT OF MARRIAGE.

Article

1. Nature and validity of marriage contract.

Article

2. Solemnization of marriage.
3. Licenses, certificates and records.

ARTICLE 1.

NATURE AND VALIDITY OF MARRIAGE CONTRACT.

Section

2611. What constitutes marriage.
2612. Persons who may marry.
2613. Proof of consent and consummation.
2614. When voidable.
2615. Incestuous marriages.
2616. Marriages of caucasians with negroes.

Section

2617. Polygamous marriages.
2618. Release from contract for unchastity.
2619. Recognition of foreign marriages.

What Constitutes Marriage.

Sec. 2611. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization or by a mutual assumption of marital rights, duties or obligations.

Historical: Rev. St. 1887, Sec. 2420.
9 Ter. Ses. (1877) 24, Sec. 1.

California Legislation: Same: Civ.

Code 1872, Sec. 55; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Persons Who May Marry.

Sec. 2612. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of eighteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

Historical: Rev. St. 1887, Sec. 2421.
(See 1 Ter. Ses. (1864) 613, Sec. 2);
amended act 15th Ter. Ses. (Laws
1888-89) 44.

California Legislation: Same except
"fifteen" for "eighteen", line 2: Civ.
Code 1872, Sec. 56; Deering's Code,
ib.; Kerr's Code, ib.

Proof of Consent and Consummation.

Sec. 2613. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Historical: Rev. St. 1887, Sec. 2422.
9 Ter. Ses. (1877) 24, Sec. 3.

California Legislation: Same: Civ.

Code 1872, Sec. 57; Deering's Code, ib.; different as amended: Kerr's Code, ib.

When Voidable.

Sec. 2614. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

Historical: Rev. St. 1887, Sec. 2423.
9 Ter. Ses. (1877) 24, Sec. 4.

California Legislation: Similar: Civ.

Code 1872, Sec. 58; same as amended: Deering's Code, ib.; repealed: Kerr's Code, ib.

Incestuous Marriages.

Sec. 2615. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts or nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Historical: Rev. St. 1887, Sec. 2424.
See 4 Ter. Ses. (1867) 71, Sec. 2.

California Legislation: Same: Civ.
Code 1872, Sec. 59; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Penalty for incestuous marriages: Sec. 6809.

Marriages of Caucasians With Negroes.

Sec. 2616. All marriages of white persons with negroes or mulattoes are illegal and void.

Historical: Rev. St. 1887, Sec. 2425.
See 4 Ter. Ses. (1867) 71, Sec. 3.

California Legislation: Same: Civ.
Code 1872, Sec. 60; Deering's Code,

ib.; same except "mongolians" inserted after "negroes": Kerr's Code, ib.

Polygamous Marriages.

Sec. 2617. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning unless: (1) The former marriage of either party has been annulled or dissolved more than six months; or (2) such former husband or wife was absent and not known to such person to be living for the space of five successive years immediately preceding, or was generally reputed, and was believed by such person, to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

Historical: Rev. St. 1887, Sec. 2426.
(See 9 Ter. Ses. (1877) 24, Sec. 6);
amended Laws 1903, 10, Sec. 1.

California Legislation: Similar: Civ.
Code 1872, Sec. 61; as amended:

Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: Penalty for polygamous marriages: Sec. 6806.

Release From Contract for Unchastity.

Sec. 2618. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

Historical: Rev. St. 1887, Sec. 2427.

California Legislation: Same except "unless both parties participate there-

in", last line, omitted: Civ. Code 1872, Sec. 62; Deering's Code, ib.; Kerr's Code, ib.

Recognition of Foreign Marriages.

Sec. 2619. All marriages contracted without this State, which would be valid by the laws of the country in which the same were contracted, are valid in this State.

Historical: Rev. St. 1887, Sec. 2428.

4 Ter. Ses. (1867) 71, Sec. 5.

California Legislation: Same: Civ.

Code 1872, Sec. 63; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 2.

SOLEMNIZATION OF MARRIAGE.

Section

- 2620. How solemnized.
- 2621. Duty of persons officiating.
- 2622. By whom solemnized.
- 2623. Form of ceremony.
- 2624. Examination of witnesses.
- 2625. Certificate to parties.

Section

- 2626. Fees of officer.
- 2627. Validity not affected by want of authority.
- 2628. Marriage certificate as evidence.

How Solemnized.

Sec. 2620. Marriage must be solemnized, authenticated, and recorded as provided in this chapter, but non-compliance with its provisions does not invalidate any lawful marriage.

Historical: Rev. St. 1887, Sec. 2429.

9 Ter. Ses. (1877) 24, Sec. 8.

California Legislation: Same except "licensed" inserted before "sol-

emnized", line 1, and "article" for "chapter", line 2: Civ. Code 1872, Sec. 68; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Duty of Person Officiating.

Sec. 2621. All persons herein authorized to solemnize marriages must ascertain and be assured of:

1. The identity of the parties;
2. Their real and full names and places of residence;
3. That they are of sufficient age to be capable of contracting marriage;
4. If the male is under the age of eighteen or the female under the age of eighteen years, the consent of the father, mother, or guardian, if any such, is given, or that such non-aged person has been previously but is not at the time married; and that the parties applying for the rites of marriage, and making such contract, have a legal right so to do.

Historical: Rev. St. 1887, Sec. 2430.

9 Ter. Ses. (1877) 24, Sec. 9. "Eighteen" inserted for "sixteen" in subd. 4, line 2, to conform to Laws 1888-89, 44 (Sec. 2612 ante) which amended Rev. St. 1887, Sec. 2421, by raising the age of capacity in females from sixteen to eighteen years.

California Legislation: See Civ. Code 1872, Sec. 72; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

By Whom Solemnized.

Sec. 2622. Marriage may be solemnized by either a Justice of the Supreme Court, District or probate judge, the Governor, a justice

of the peace, mayor, priest, or minister of the gospel of any denomination.

Historical: Rev. St. 1887, Sec. 2431.
1 Ter. Ses. (1864) 613, Sec. 4.

California Legislation: Same except "county" for "probate", line 2; "the

Governor", line 2, omitted: Civ. Code 1872, Sec. 70; similar as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Form of Ceremony.

Sec. 2623. No particular form for the ceremony of marriage is required, but the parties must declare in the presence of the person solemnizing the marriage that they take each other as husband and wife.

Historical: Rev. St. 1887, Sec. 2432.
See 1 Ter. Ses. (1864) 614, Sec. 6.

California Legislation: Same: Civ.

Code 1872, Sec. 71; Deering's Code, ib.; Kerr's Code, ib.

Examination of Witnesses.

Sec. 2624. The person solemnizing the marriage may administer oaths and examine the parties and witnesses for the purpose of satisfying himself that the contracting parties are qualified under the requirements of this chapter.

Historical: Rev. St. 1887, Sec. 2433.
9 Ter. Ses. (1877) 24, Sec. 11.

California Legislation: See Civ.

Code 1872, Sec. 72; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Certificate to Parties.

Sec. 2625. When a marriage has been solemnized, the person solemnizing the same must give to each of the parties, if required, a certificate thereof.

Historical: Rev. St. 1887, Sec. 2436.
See 1 Ter. Ses. (1864) 614, Sec. 7.

California Legislation: See Civ.

Code 1872, Sec. 74; Deering's Code, ib.; Kerr's Code, ib.

Fees of Officer.

Sec. 2626. The person solemnizing a marriage is for such service entitled to receive from the parties married the sum of five dollars, but may receive any other or greater sum voluntarily given by the parties to such marriage.

Historical: Rev. St. 1887, Sec. 2438.
9 Ter. Ses. (1877) 24, Sec. 16.

Disposition of Fees: Fees received by the probate judge for solemnizing marriages must be turned into the county treasury, but any gratuities

given him by the parties over and above the amount of the legal fee, may be retained for his individual use. *Rhea v. Board of Commissioners* (1906) 12 Ida. 455; 88 Pac. 89.

Validity Not Affected by Want of Authority.

Sec. 2627. No marriage solemnized by any person professing to be a judge, justice, or minister, is deemed or regarded void, nor is the validity thereof to be in any way affected on account of any want of jurisdiction or authority: *Provided*, It be consummated with a full belief on the part of the person so married, or either of them, that they have been lawfully joined in marriage.

Historical: Rev. St. 1887, Sec. 2439.
1 Ter. Ses. (1864) 615; Sec. 13.

Marriage Certificate as Evidence.

Sec. 2628. The original certificate, and record of marriage made by the judge, justice or minister, as prescribed in this chapter, and the record thereof by the recorder of the county, or a copy of such record duly certified by such recorder, must be received in all courts and places as presumptive evidence of the fact of such marriage.

Historical: Rev. St. 1887, Sec. 2440. (1 Ter. Ses. (1864) 615, Sec. 14); amended act 15th Ter. Ses. (Laws

1888-89) 44. "Recorder" for "probate judge"; the recorder now records marriages. See Sec. 2635 post.

ARTICLE 3.
LICENSES, CERTIFICATES AND RECORDS.

Section	Section
2629. Marriage license: Contents.	2634. Solemnization without license: Penalty.
2630. Same: Certificate and return.	2635. Record of return of license.
2631. Application for and issuance of license.	2636. Fees for issuing license.
2632. Same: Administration of oaths.	2637. Marriage books as evidence.
2633. Minister or officer may solemnize marriage.	2638. Penalty for false return.
	2639. Disposition of penalties.

Marriage License: Contents.

Sec. 2629. The county recorder of any county in this State shall have authority to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this State to contract matrimony, authorizing the marriage of such parties, which licenses shall be substantially in the following form:

Know all men by this certificate that any regularly ordained minister of the gospel, authorized by the rites and usages of the church or denomination of Christians, Hebrews, or religious body of which he may be a member, or any judge or justice of the peace or competent officer to whom this may come, he not knowing of any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between _____, of _____ of the county of _____, and State of _____, and _____, of _____ of the county of _____, State of _____, and to certify the same to said parties, or either of them, under his hand and seal, in his ministerial or official capacity, and thereupon he is required to return his certificate in form following, as hereto annexed.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at _____, this _____ day of _____, A. D. 19_____

Recorder.

Historical: Laws 1899, 278, Sec. 1; re-enacting Laws 1895, 166, Sec. 1. "State of....." inserted in form

to complete the description of the domicile of the parties.

Same: Certificate and Return.

Sec. 2630. The form of certificate annexed to said license, and therein referred to, shall be as follows:

I, _____, a _____, residing at _____,

in the county of _____, in the State of Idaho, do certify that, in accordance with the authority on me conferred by the above license, I did on this _____ day of _____, in the year A. D. 19_____, at _____ in the county of _____, in the State of Idaho, solemnize the rights of matrimony between _____, of _____, in the county of _____, of the _____, and _____, of _____, of the county of _____, of the _____, in the presence of _____ and _____.

Witness my hand and seal at the county aforesaid, this _____ day of _____, A. D. 19_____.

In the presence of _____ [SEAL]

The license and certificate, duly executed by the minister or officer who shall have solemnized the marriage authorized, shall be returned by him to the office of the recorder who issued the same, within thirty days from the date of solemnizing the marriage therein authorized; and a neglect to make such return shall be deemed a misdemeanor, and the person whose duty it shall be to make such return, who shall neglect to make such return within the time above specified, shall, upon conviction thereof, be punished by a fine of not less than twenty nor more than fifty dollars to be assessed by any justice of the peace or other court having jurisdiction.

Historical: Laws 1899, 278, Sec. 2;
re-enacting Laws 1895, 166, Sec. 2.

Application for and Issuance of License.

Sec. 2631. Every county recorder who shall have personal knowledge of the competency of the parties for whose marriage a license is applied for, shall issue such license upon payment or tender to him of his legal fee therefor; and if such recorder does not know of his own knowledge that the parties are competent under the laws of the State to contract matrimony, he shall take the affidavit in writing of the person or persons applying for such license, and of other persons as he may see proper, and of any persons whose testimony may be offered; and if it appear from the affidavit so taken that the parties for whose marriage the license in question is demanded are legally competent to marry, the recorder shall issue such license, and the affidavits so taken shall be his warrant against any fine or forfeiture for issuing such license. Any county recorder who shall issue a license to marry to parties, one or both of whom shall not be, at the time of marriage under such license, legally competent to marry, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of one hundred dollars before any court having jurisdiction.

Historical: Laws 1899, 278, Sec. 3;
re-enacting Laws 1895, 166, Sec. 3.

Same: Administration of Oaths.

Sec. 2632. The county recorder shall have power to administer all oaths required or provided for in this article, and if any person in any such affidavit shall wilfully and corruptly swear falsely to

any material fact as to the competency of any person for whose marriage the license in question refers, or concerning the procuring or issuing of which such affidavit may be made, shall be guilty of perjury, and, upon conviction thereof, shall be punished as provided by statute in other cases of perjury.

Historical: Laws 1899, 278, Sec. 4;
re-enacting Laws 1895, 166, Sec. 4.

Cross Reference: Punishment for
perjury: Sec. 6486.

Minister or Officer May Solemnize Marriage.

Sec. 2633. Any authorized minister or officer to whom any such license, duly issued, may come, not having personal knowledge of the incompetency of either party therein named to contract matrimony, may lawfully solemnize matrimony between them.

Historical: Laws 1899, 278, Sec. 5;
re-enacting Laws 1895, 166, Sec. 5.

Solemnization Without License: Penalty.

Sec. 2634. If any such minister or officer shall presume to solemnize any marriage between parties without such a license, or with knowledge that either party is legally incompetent to contract matrimony as is provided for by the laws of this State, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars before any court having jurisdiction.

Historical: Laws 1899, 278, Sec. 6;
re-enacting Laws 1895, 166, Sec. 6.

Record of Return of License.

Sec. 2635. The recorder shall record all such returns of marriage licenses in a book to be kept for that purpose, within one month after receiving the same. If any recorder shall neglect or refuse to record within the said time any return to him made, he shall forfeit one hundred dollars, to be recovered, with costs, by any person who will prosecute for the same.

Historical: Laws 1899, 278, Sec. 7;
re-enacting Laws 1895, 166, Sec. 7.

Fees for Issuing License.

Sec. 2636. The recorder of each county in this State shall be entitled to a fee of one dollar for each license issued, which fee he shall demand and receive from the person applying for the same, and he may refuse to issue any such license until such fee is paid to him. Said fee shall also include the payment for the service of recording the license upon its return by the minister or officer solemnizing the marriage for which it was issued.

Historical: Laws 1899, 278, Sec. 8;
re-enacting Laws 1895, 166, Sec. 8.

Marriage Books as Evidence.

Sec. 2637. The books of marriages and copies of entries therein, certified by the recorder under his official seal, shall be evidence in all courts.

Historical: Laws 1899, 278, Sec. 9;
re-enacting Laws 1895, 166, Sec. 9.
See 4 Ter. Ses. (1867) 71, Sec. 10.

Penalty for False Return.

Sec. 2638. If any person, authorized to solemnize marriage, shall wilfully make a false return of any marriage or pretended marriage to the recorder; or, if the recorder shall wilfully record a false return of any marriage, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and by imprisonment for not less than three months.

Historical: Laws 1899, 278, Sec. 10;
re-enacting Laws 1895, 166, Sec. 10.

Disposition of Penalties.

Sec. 2639. All fines and penalties accruing under the provisions of this article shall be paid into the county treasury for the use of the common schools in the county where the offense was committed.

Historical: Laws 1899, 278, Sec. 11;
re-enacting Laws 1895, 166, Sec. 11.

CHAPTER 2.

DIVORCE.

Article

1. Annulment of marriage.
2. Grounds for and defenses against divorce.

Article

3. Actions for divorce, custody of children and disposition of property.

ARTICLE 1.

ANNULMENT OF MARRIAGE.

Section

2640. Annulment of marriage: Grounds.
2641. Action to annul: Parties and limitations.

Section

2642. Legitimacy of children.
2643. Custody of children.
2644. Conclusiveness of judgment.

Annulment of Marriage: Grounds.

Sec. 2640. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabits with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable.

Historical: Rev. St. 1887, Sec. 2450.
See 8 Ter. Ses. (1875) 639, Sec. 4.

California Legislation: Same except the words beginning with "and such

marriage" and ending "him or her" subd. 1, are omitted: Civ. Code 1872, Sec. 82; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Action to Annul: Parties and Limitations.

Sec. 2641. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one; by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent;

2. For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife;

3. For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subdivision four; by the party injured, within four years after the discovery of the facts constituting the fraud;

5. For causes mentioned in subdivision five; by the injured party, within four years after the marriage;

6. For causes mentioned in subdivision six; by the injured party, within four years after the marriage.

Historical: Rev. St. 1887, Sec. 2451.

California Legislation: Similar: Civ.

Code 1872, Sec. 83; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Legitimacy of Children.

Sec. 2642. When a marriage is annulled on the ground that a former husband or wife is living, or on the ground of insanity, children begotten before the judgment are legitimate and succeed to the estate of both parents.

Historical: Rev. St. 1887, Sec. 2452.

California Legislation: Same: Civ. Code 1872, Sec. 84; Deering's Code,

ib.; similar as amended: Kerr's Code, ib.

Custody of Children.

Sec. 2643. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Historical: Rev. St. 1887, Sec. 2453.

California Legislation: Same: Civ.

Code 1872, Sec. 85; Deering's Code, ib.; Kerr's Code, ib.

Conclusiveness of Judgment.

Sec. 2644. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

Historical: Rev. St. 1887, Sec. 2454.
California Legislation: Same: Civ.

Code 1872, Sec. 86; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 2.**GROUND FOR AND DEFENSES AGAINST DIVORCE.****Section**

2645. Dissolution of marriage.
 2646. Effect of decree.
 2647. Causes for divorce.
 2648. Adultery.
 2649. Extreme cruelty.
 2650. Desertion.
 2651. Wilful neglect.

Section

2652. Habitual intemperance.
 2653. Continuation of cause.
 2654. Denial of divorce.
 2655. Collusion.
 2656. Recrimination.
 2657. Condonation.
 2658. Limitations.

Dissolution of Marriage

Sec. 2645. Marriage is dissolved only:

1. By the death of one of the parties; or
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

Historical: Rev. St. 1887, Sec. 2455.
California Legislation: Similar: Civ.

Code 1872, Sec. 90; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Effect of Decree.

Sec. 2646. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

Historical: Rev. St. 1887, Sec. 2456.
California Legislation: Similar: Civ.

Code 1872, Sec. 91; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Causes for Divorce.

Sec. 2647. Divorces may be granted for any of the following causes:

1. Adultery;
2. Extreme cruelty;
3. Wilful desertion;
4. Wilful neglect;
5. Habitual intemperance;
6. Conviction of a felony.
7. When either the husband or wife has become permanently insane, as provided in Sections 4624 to 4628, inclusive, of the Code of Civil Procedure.

Historical: Rev. St. 1887, Sec. 2457. See 1 Ter. Ses. (1864) 616, Sec. 22. Subdivision 7 is added on the authority of Laws 1899, 232, Sec. 1, as amended by Laws 1903, 332, Sec. 1 (Code Sec. 4624).

California Legislation: Same except "must" for "may," line 1; Civ. Code 1872, Sec. 92; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Divorces on the ground of insanity: Secs. 4624-4628.

Adultery.

Sec. 2648. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Historical: Rev. St. 1887, Sec. 2458.

California Legislation: Same: Civ. Code 1872, Sec. 93; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Penalty for adultery: Sec. 6807.

Extreme Cruelty.

Sec. 2649. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

Historical: Rev. St. 1887, Sec. 2459.

California Legislation: Same: Civ. Code 1872, Sec. 94; Deering's Code,

ib.; "wrongful" inserted before "infliction" as amended: Kerr's Code, ib.

Desertion.

Sec. 2650. Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Historical: Rev. St. 1887, Sec. 2460.

California Legislation: Same: Civ. Code 1872, Sec. 95; Deering's Code, ib.; Kerr's Code, ib.

What Constitutes Desertion: Where the husband establishes a new home and requests his wife to follow him

and furnishes her the means with which to travel, and she declines to take up her residence with him, the husband is not guilty of desertion because he fails to support his wife during her absence. *Roby v. Roby* (1904) 10 Ida. 139; 77 Pac. 213.

Wilful Neglect.

Sec. 2651. Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation.

Historical: Rev. St. 1887, Sec. 2461.

California Legislation: Same: Civ. Code 1872, Sec. 105; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Penalty for neglect of wife and children: Sec. 6781.

Habitual Intemperance.

Sec. 2652. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

Historical: Rev. St. 1887, Sec. 2462.

California Legislation: Same: Civ.

Code 1872, Sec. 106; Deering's Code, ib.; Kerr's Code, ib.

Continuation of Cause.

Sec. 2653. Wilful desertion, wilful neglect or habitual intemperance must continue for one year before either is a ground for divorce.

Historical: Rev. St. 1887, Sec. 2463.

California Legislation: Same: Civ. Code 1872, Sec. 107; Deering's Code, ib.; Kerr's Code, ib.

Desertion by Husband: Where a husband first deserts his wife and remains absent from her for a period in excess of that prescribed by this

section, she may thereafter refuse to live with him and can maintain an action against him for a divorce, or defeat an action brought by him against her for such divorce. *Stoneburner v. Stoneburner* (1905) 11 Ida. 603; 83 Pac. 938.

Denial of Divorce.

Sec. 2654. Divorces must be denied upon showing:

1. Collusion; or
2. Condonation; or
3. Recrimination; or
4. Limitation and lapse of time.

Historical: Rev. St. 1887, Sec. 2464.

California Legislation: Same except "1. Connivance; or" inserted after "showing," line 1; and "2, 3, 4, 5." for "1, 2, 3, 4": Civ. Code 1872, Sec.

111; Deering's Code, ib.; Kerr's Code, ib.

Cited: Stoneburner v. Stoneburner (1905) 11 Ida. 603; 83 Pac. 938.

Collusion.

Sec. 2655. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce, and is a bar to an action for such acts.

Historical: Rev. St. 1887, Sec. 2465.

California Legislation: Same except the last words, "and is a bar to an

action for such acts," are omitted: Civ. Code 1872, Sec. 114; Deering's Code, ib.; Kerr's Code, ib.

Recrimination.

Sec. 2656. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Historical: Rev. St. 1887, Sec. 2466.

California Legislation: Same: Civ. Code 1872, Sec. 122; Deering's Code, ib.; Kerr's Code, ib.

Recrimination a Defense: The defense of recrimination constitutes a

complete bar to a divorce, where the defendant shows a valid existing cause of action for divorce against the plaintiff. Stoneburner v. Stoneburner (1905) 11 Ida. 603; 83 Pac. 938.

Condonation.

Sec. 2657. Condonation of a cause of divorce shown in the answer as a recriminatory defense, is a bar to such defense when the condonee has fully performed the marital duties, and is without reproach since the condonation, or if two years or more have elapsed after the condonation.

Historical: Rev. St. 1887, Sec. 2467.

California Legislation: Similar but "three" for "two," last line, and addi-

tional clause: Civ. Code 1872, Sec. 123; similar as amended: Deering's code, ib.; Kerr's Code, ib.

Limitations.

Sec. 2658. A divorce must be denied:

1. When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or
2. When the cause is conviction of felony, and the action is not commenced before the expiration of one year after a pardon or the termination of the period of sentence;
3. In all other cases when there is an unreasonable lapse of time before the commencement of the action.

Historical: Rev. St. 1887, Sec. 2468.

California Legislation: Same except "five" for "one," year, Subd. 1, and "after the commission of the offense

and" inserted after "time," Subd. 3: Civ. Code 1872, Sec. 124; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 3.

ACTION FOR DIVORCE, CUSTODY OF CHILDREN AND DISPOSITION OF PROPERTY.

Section

2659.	Residence required of plaintiff.
2660.	Domicile of parties.
2661.	Not granted by default or confession.
2662.	Allowance of support and suit money.
2663.	Custody of children.
2664.	Alimony for default of husband.
2665.	Same: Security.
2666.	Same: What property liable.

Section

2667.	Allowance from separate property withheld.
2668.	Allowance for support of children.
2669.	Legitimacy of issue.
2670.	Disposition of community property and homestead.
2671.	Same: Order for disposition.
2672.	Same: Revision on appeal.
2673.	Jurisdiction of actions.

Note: Exclusion of witnesses: Sec. 3861. Procedure in divorce for insanity: Secs. 4624-4628.

Residence Required of Plaintiff.

Sec. 2659. A divorce must not be granted unless the plaintiff has been a resident of the State for six months next preceding the commencement of the action.

Historical: Rev. St. 1887, Sec. 2469. 8 Ter. Ses. (1875) 639, Sec. 3.
California Legislation: Same: Civ. Code 1872, Sec. 128; Deering's Code, ib.; "for one year and of the county in which the action is brought three months" for "for six months," as amended: Kerr's Code, ib.

Removal From State: A resident of this State who removes to another State and lives there for four years, cannot commence a suit for divorce within thirty days after returning to this State. *Strode v. Strode* (1898) 6 Ida. 67; 52 Pac. 161.

Domicile of Parties.

Sec. 2660. In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

Historical: Rev. St. 1887, Sec. 2470.
California Legislation: Same: Civ. Code 1872, Sec. 129; Deering's Code, ib.; Kerr's Code, ib.

Not Granted by Default or Confession.

Sec. 2661. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

Historical: Rev. St. 1887, Sec. 2471. See 8 Ter. Ses. (1875) 639, Sec. 8.
California Legislation: Similar: Civ. Code 1872, Sec. 130; same as amended: Deering's Code, ib.; Kerr's Code, ib.
Cited: *Strode v. Strode* (1898) 6 Ida. 67; 52 Pac. 161.

Allowance of Support and Suit Money.

Sec. 2662. While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

Historical: Rev. St. 1887, Sec. 2472. 8 Ter. Ses. (1875) 639, Sec. 7.

California Legislation: Same: Civ. Code 1872, Sec. 137; additional provisions as amended: Deering's Code, ib.; as amended: Kerr's Code, ib.

Allowance Pending Appeal: Where an appeal has been taken from a judg-

ment in a divorce case, the District Court still retains jurisdiction to make orders directing the payment of costs, expenses and attorneys' fees, necessary in the preparation and perfection of the appeal. *Roby v. Roby* (1903) 9 Ida. 371; 74 Pac. 957.

Custody of Children.

Sec. 2663. In an action for divorce the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

Historical: Rev. St. 1887, Sec. 2473. 8 Ter. Ses. (1875) 639, Sec. 7.

California Legislation: Same: Civ. Code 1872, Sec. 138; Deering's Code,

ib.; similar as amended: Kerr's Code, ib.

Cited: In re Miller (1896) 4 Ida. 711; 43 Pac. 870.

Alimony for Fault of Husband.

Sec. 2664. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

Historical: Rev. St. 1887, Sec. 2474. 8 Ter. Ses. (1875) 639, Sec. 7.

California Legislation: Same except "during her life or for a shorter

period" inserted after "support," line 4: Civ. Code 1872, Sec. 139; Deering's Code, ib.; Kerr's Code, ib.

Same: Security.

Sec. 2665. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

Historical: Rev. St. 1887, Sec. 2475.

California Legislation: Same: Civ.

Code 1872, Sec. 140; Deering's Code, ib.; Kerr's Code, ib.

Same: What Property Liable.

Sec. 2666. In executing the four preceding sections the court must resort:

1. To the community property; then
2. To the separate property of the husband.

Historical: Rev. St. 1887, Sec. 2476.

California Legislation: Same except "five" for "four", line 1: Civ. Code

1872, Sec. 141; Deering's Code, ib.; Kerr's Code, ib.

Allowance From Separate Property Withheld.

Sec. 2667. When the wife has a sufficient separate estate, or there is community property sufficient to give her alimony or a proper support, the court must withhold any allowance to her out of the separate property of the husband.

Historical: Rev. St. 1887, Sec. 2477.

California Legislation: Same except "has either a" for "has a sufficient," line 1; "in its discretion may" for

"must," line 3; Civ. Code 1872, Sec. 142; Deering's Code, ib.; Kerr's Code, ib.

Allowance for Support of Children.

Sec. 2668. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

Historical: Rev. St. 1887, Sec. 2478.

California Legislation: Same: Civ.

Code 1872, Sec. 143; Deering's Code, ib.; Kerr's Code, ib.

Legitimacy of Issue.

Sec. 2669. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case.

Historical: Rev. St. 1887, Sec. 2479.
See 8 Ter. Ses. (1875) 639, Sec. 6.

California Legislation: Same: Civ.

Code 1872, Sec. 145; Deering's Code, ib.; Kerr's Code, ib.

Disposition of Community Property and Homestead.

Sec. 2670. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead may be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property must be assigned to the respective parties in such proportions as the court, from all the facts of the case and the condition of the parties, deems just;

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property must be equally divided between the parties;

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject in the latter case to the future disposition of the court; or it may be divided or be sold and the proceeds divided;

4. If a homestead has been selected from the separate property of either, it must be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

Historical: Rev. St. 1887, Sec. 2480.
See 8 Ter. Ses. (1875) 635, Sec. 12.

California Legislation: Different: Civ. Code 1872, Sec. 146; same as amended except "shall be" for "must be" in Subds. 1, 2 and 4; Deering's Code, ib.; Kerr's Code, ib.

Division of Property: A wife who abandons her husband and home in this State, takes up a separate resi-

dence in another State, procures a decree of divorce on substituted service in that State, and forms a new community by another marriage, cannot maintain an action thereafter in this State for a division of the community property. (Sullivan, C. J., dissents.) *Bedal v. Sake* (1904) 10 Ida. 270; 77 Pac. 638.

Same: Order for Disposition.

Sec. 2671. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead as in this chapter provided, and, whenever necessary for

that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

Historical: Rev. St. 1887, Sec. 2481. See 8 Ter. Ses. (1875) 635, Sec. 12.	Code 1872, Sec. 147; same as amended: Deering's Code, ib.; Kerr's Code, ib.
Comparative Legislation: See Civ.	

Same: Revision on Appeal.

Sec. 2672. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

Historical: Rev. St. 1887, Sec. 2482. See 8 Ter. Ses. (1875) 635, Sec. 12.	Code 1872, Sec. 148; same as amended: Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Similar: Civ.	

Jurisdiction of Actions.

Sec. 2673. Exclusive original jurisdiction of all actions and proceedings under this chapter is in the District Court, and the Judge thereof at chambers may make all necessary orders for temporary alimony and support, and the expenses of the action and the custody of children and property during the pendency of the action.

Historical: Rev. St. 1887, Sec. 2483. See 8 Ter. Ses. (1875) 639, Sec. 1.	Cited: In re Miller (1896) 4 Ida. 711; 43 Pac. 870.
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CHAPTER 3.
HUSBAND AND WIFE.

Section	Section
2674. Mutual obligations.	2685. Same: Wife's liability.
2675. Head of family.	2686. Husband's control of community property.
2676. Separate property of wife.	2687. Curtesy and dower abolished.
2677. Same: Management.	2688. Support of infirm husband.
2678. Same: Marriage settlements not affected.	2689. Property rights governed by chapter.
2679. Separate property of husband.	2690. Formalities required of marriage settlements.
2680. Community property.	2691. Same: Record.
2681. Inventory of wife's property.	2692. Same: Effect of record.
2682. Same: Effect.	2693. Same: Minor may make settlement.
2683. Earnings of wife living separate from husband.	
2684. Liability for ante-nuptial debts.	

Note: Sole traders: Secs. 5850-5860.

Mutual Obligations.

Sec. 2674. Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

Historical: Rev. St. 1887, Sec. 2493.	Code 1872, Sec. 155; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same: Civ.	

Head of Family.

Sec. 2675. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Historical: Rev. St. 1887, Sec. 2494.

California Legislation: Same: Civ. Code 1872, Sec. 156; Deering's Code, ib.; Kerr's Code, ib.

Cited: Law v. Spence (1897) 5 Ida. 244; 48 Pac. 282.

Separate Property of Wife.

Sec. 2676. All property of the wife owned by her before marriage, and that acquired afterwards by gift, bequest or descent, or that which she shall acquire with the proceeds of her separate property, shall remain her sole and separate property, to the same extent and with the same effect, as the property of a husband similarly acquired.

Historical: Rev. St. 1887, Sec. 2495. (see 4 Ter. Ses. (1867) 65, Sec. 1); amended Laws 1903, 345, Sec. 1.

California Legislation: Similar: Civ. Code 2872, Sec. 162; Deering's Code, ib.; Kerr's Code, ib.

Cited: Bassett v. Beam (1894) 4 Ida. 106; 36 Pac. 501. Dernham & Kaufman v. Rowley (1896) 4 Ida. 753; 44 Pac. 643. Bank of Commerce v. Baldwin (1906) 12 Ida. 202; 85 Pac. 497.

Same: Management.

Sec. 2677. During the continuance of the marriage, the wife has the management, control and absolute power of disposition of her separate property, and may bargain, sell and convey her real and personal property, and may enter into any contract with reference to the same, in the same manner, and to the same extent, and with like effect, as a married man may in relation to his real and personal property: *Provided*, That the husband shall be bound by such contracts to no greater extent or effect than his wife under similar circumstances would be bound by his contracts.

Historical: Laws 1903, 345, Sec. 2.

Cross Reference: Married women may transfer stock held by them in corporations: Sec. 2748. May hold stock in homestead corporation: Sec. 2849. May hold and transfer stock in land and building corporations: Sec. 3055. Capacity of married women to sue and be sued: Sec. 4093.

Cited: Grice v. Woodworth (1904) 10 Ida. 459; 80 Pac. 812.

Application of Section: This section and the act of which it is a part refers only to the separate property of the wife, and the management and control thereof, and does not empower a married woman to bind herself personally for the payment of a debt that was not contracted for her own use, or for the use and benefit of her separate estate, or in connection with the control and management thereof, or in conducting business connected therewith. Bank of Commerce v. Baldwin (1906) 12 Ida. 202; 85 Pac. 497.

Creation of Liability: In order for a married woman to create a charge against her separate estate for a debt not contracted for her use, nor for the benefit of such separate property, it must be made a charge in rem by mortgage or pledge of the property or in some manner known to the law as constituting a lien upon property; such a charge cannot be created by a mere representation of the woman

that she owns a certain amount, class or character of property. Ib.

Repeal: The act of which this section is a part expressly repeals Rev. St. Secs. 2498 and 2499. Sec. 2499 provided for the appointment of a trustee in case of mismanagement by the husband. Decisions under the repealed Sec. 2498, which gave the husband the management and control of the separate property of the wife during coverture, except in the sale or the creation of liens on the same, were as follows: The separate property of the wife could be pledged for the debts of the husband only by an instrument in writing signed by both husband and wife and duly acknowledged. Dernham & Kaufman v. Rowley (1896) 4 Ida. 753; 44 Pac. 643. But the purchaser of property from a married woman was estopped in a suit for the purchase price to interpose the defense that the contract of sale was not made in the prescribed manner where he used and consumed the property. Karlson v. Hanson & Karlson, etc. Co., (1904) 10 Ida. 361; 78 Pac. 1080.

The section was held to refer only to the voluntary creation of liens or incumbrances and did not preclude a married woman from contracting for the erection of improvements on her separate property and thereby subjecting the same to liability to a lien. Bassett v. Beam (1894) 4 Ida. 106; 36 Pac. 501.

Same: Marriage Settlements Not Affected.

Sec. 2678. Nothing in the two preceding sections contained shall invalidate, alter or change any marriage settlement now made or to be made hereafter.

Historical: Laws 1903, 345, Sec. 4.

Separate Property of Husband.

Sec. 2679. All property owned by the husband before marriage, and that acquired by gift, bequest, devise or descent is his separate property.

Historical: Rev. St. 1887, Sec. 2496. See 4 Ter. Ses. (1867) 65, Sec. 1.

California Legislation: Same except "with the rents, issues and profits thereof" inserted after "descent," line 2: Civ. Code 1872, Sec. 163; Deering's Code, *ib.*; Kerr's Code, *ib.*

Cited: Kneen v. Halin (1899) 6 Ida., 621; 59 Pac. 14; Karlson v. Hanson & Karlson etc. Co. (1904) 10 Ida. 361; 78 Pac. 1080.

Community Property.

Sec. 2680. All other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, is community property, unless by the instrument by which any such property is acquired by the wife it is provided that the rents and profits thereof be applied to her sole and separate use; in which case the management and disposal of such rents and profits belong to the wife, and they are not liable for the debts of the husband.

Historical: Rev. St. 1887, Sec. 2497. See 4 Ter. Ses. (1867) 65, Sec. 2.

California Legislation: Similar in part: Civ. Code 1872, Sec. 164; Deering's Code, *ib.*; as amended: Kerr's Code, *ib.*

Cross Reference: Community property defined: Sec. 3060.

Cited: Dernham & Kaufman v. Rowley (1896) 4 Ida. 753; 44 Pac. 643; Kneen v. Halin (1899) 6 Ida. 621; 59 Pac. 14.

Application: This section is not limited to a community created in this State or to one composed of persons, who, having been married elsewhere, come within the State, and become domiciled here, but protects a non-resident wife of a man who comes into this state and acquires property here. Jacobson v. Bunker Hill etc. Co (1891) 3 Ida. 126; 26 Pac. 396.

Construction With Sec. 4479: This section must be construed with Sec. 4479 under which the rents, issues and profits of the separate property of the wife are exempt from execution against the husband. Thorn v. Anderson (1900) 7 Ida. 421; 63 Pac. 592.

What Constitutes Community Property: Property purchased in the name of the wife partly with funds of her separate estate and

partly with money borrowed during the existence of the community, is the separate property of the wife to the extent of which funds of her separate estate were used, and community property to the extent to which the borrowed money was used, in its purchase. N. W. etc. Bank v. Rauch (1900) 7 Ida. 152; 61 Pac. 516. And the husband cannot encumber such of the property as was purchased with the money borrowed during **coverture**. *Ib.*

Property conveyed to the wife during coverture and occupied by the husband and wife as a residence, is presumed to be community property in the absence of any showing that it is the separate property of the wife. Stowell v. Tucker (1900) 7 Ida. 312; 62 Pac. 1033.

Mining property held under a grant from the United States may be community property. Jacobsen v. Bunker Hill etc. Co. (1891) 3 Ida. 126; 26 Pac. 396.

Actions Concerning Community Property: A complaint to recover community property which alleges that the property was acquired during coverture, and was the community property of the parties, is sufficient without further stating that the property was not obtained by "gift, bequest, devise, or descent." *Ib.*

In an action against a wife to fore-

close a mortgage on community property where the husband, being a necessary party to such action, is not served with process, the judgment, being void as to the husband, is also void as to the wife. *Vermont Loan & Trust Co. v. McGregor* (1897) 5 Ida. 510; 51 Pac. 104.

In an action to foreclose a mortgage, where it appears from the pleadings that the notes and mortgage were executed by both husband and wife, the presumption is that the premises were community property unless the record discloses that such premises were the separate property of either the husband or the wife. *Id.*

In an action to foreclose a mortgage, executed by husband and wife, failure to allege that the mortgaged property or any part thereof is the separate estate of the wife, or that the debts were created for the benefit of her separate estate, raises a presumption that said debts are debts of the husband, and that such property is community property. *Strode v. Miller* (1900) 7 Ida. 16; 59 Pac. 893.

In an action upon an account by a married woman, the fact that the account sued upon is community property is a proper defense. *Holton v. Sand Point Lbr. Co.* (1901) 7 Ida. 573; 64 Pac. 889.

Inventory of Wife's Property.

Sec. 2681. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

Historical: Rev. St. 1887, Sec. 2500.
4 Ter. Ses. (1867) 65, Sec. 3.

California Legislation: Same: Civ.

Code 1872, Sec. 165; Deering's Code, ib.; Kerr's Code, ib.

Same: Effect.

Sec. 2682. The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife.

Historical: Rev. St. 1887, Sec. 2501.
See 4 Ter. Ses. (1867) 65, Sec. 5.

California Legislation: Same except "primary" for "prima facie": Civ.

Code 1872, Sec. 166; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Earnings of Wife Living Separate From Husband.

Sec. 2683. The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband are the separate property of the wife.

Historical: Rev. St. 1887, Sec. 2502.

California Legislation: Same: Civ.
Code 1872, Sec. 169; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Bassett v. Beam* (1895) 4 Ida. 106; 36 Pac. 501; *Dernham & Kaufmann v. Rowley* (1896) 4 Ida. 753; 44 Pac. 643.

Liability for Ante-Nuptial Debts.

Sec. 2684. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Historical: Rev. St. 1887, Sec. 2503.
See 4 Ter. Ses. (1867) 65, Sec. 13.

California Legislation: Same: Civ.

Code 1872, Sec. 170; Deering's Code, ib.; Kerr's Code, ib.

Same: Wife's Liability.

Sec. 2685. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

Historical: Rev. St. 1887, Sec. 2504. 4 Ter. Ses. (1867) 65, Sec. 9.

California Legislation: Same: Civ. Code 1872, Sec. 171; Deering's Code, ib.; similar with additional provisions as amended: Kerr's Code, ib.

Liability for Debts: A married woman may contract debts after her marriage and subject her separate property to liability therefor. *Bassett v. Beam* (1894) 4 Ida. 106; 36 Pac. 501.

Same—Debts of Husband: In or-

der to charge the separate property of the wife with liability for a debt, it must be alleged and proven that the debt was incurred for the use or benefit of her separate property, or was contracted by her for her own use and benefit; debts contracted by the husband for his own benefit, or for the use of his family, cannot subject the separate property of the wife to liability therefor. *Dernham & Kaufmann v. Rowley* (1896) 4 Ida. 753; 44 Pac. 643; *Holt v. Girdley* (1900) 7 Ida. 416; 63 Pac. 188.

Husband's Control of Community Property.

Sec. 2686. The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate; but such power of disposition does not extend to the homestead or that part of the common property occupied or used by the husband and wife as a residence.

Historical: Rev. St. 1887, Sec. 2505. See 4 Ter. Ses. (1867) 65, Sec. 9; 13 Ter. Ses. (Feb. 5, 1885) 137, Sec. 1. The act of the 4th session gave the husband the entire management and control and absolute power of disposition of the common property. The act of the 13th session required the joinder of the wife in the conveyance of any property of a married person occupied as a residence or homestead, or any common property of the husband and wife.

California Legislation: Same through "estate," line 3, rest omitted: Civ. Code 1872, Sec. 172; Deering's Code, ib.; as amended: Kerr's Code, ib.

Cross Reference: Testamentary power over community property: Sec. 5713. Assignment of community property on dissolution of marriage, Sec. 2670.

Control by Husband: The action of a wife in voluntarily separating from her husband with the intention of suing for a division of the common property, does not change the character of that property so as to divest the husband of the right to

dispose thereof under this section, and a sale made by the husband in good faith and for an adequate consideration after such separation, is as valid as if no separation had taken place. *Ray v. Ray* (1874) 1 Ida. 566.

Where community property is not a homestead nor occupied as a residence, the husband may convey the same without his wife's signature, and the validity of such conveyance is not affected by the joinder of the wife therein and her acknowledgment thereto being defectively taken. *Wilson v. Wilson* (1899) 6 Ida. 597; 57 Pac. 708.

Same—Disposition of Residence: The homestead occupied by husband and wife as a residence is common property of the marital community, and the husband alone cannot convey or encumber it, so long as it continues to be the residence of himself and wife, but it is in his power to change its character as a residence at any time without the consent or the co-operation of the wife. *Law v. Spence* (1897) 5 Ida. 244; 48 Pac. 282.

Curtesy and Dower Abolished.

Sec. 2687. No estate is allowed the husband as tenant by curtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

Historical: Rev. St. 1887, Sec. 2506. 4 Ter. Ses. (1867) 65, Sec. 10.

California Legislation: Same: Civ. Code 1872, Sec. 173; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Inheritance of husband and wife from each other: Sec. 5702. Devolution of community property: Sec. 5713.

Support of Infirm Husband.

Sec. 2688. The wife must support the husband out of her separate

property when he has no separate property, and they no community property, and he from infirmity is not able or competent to support himself.

Historical: Rev. St. 1887, Sec. 2507.
California Legislation: Same: Civ.
 Code 1872, Sec. 176; similar as

amended: Deering's Code, ib.; Kerr's Code, ib.

Property Rights Governed by Chapter.

Sec. 2689. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

Historical: Rev. St. 1887, Sec. 2508.
 See 4 Ter. Ses. (1867) 65, Sec. 15.

Code 1872, Sec. 177; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Formalities Required of Marriage Settlements.

Sec. 2690. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as conveyances of land are required to be executed and acknowledged or proved.

Historical: Rev. St. 1887, Sec. 2509.
 4 Ter. Ses. (1867) 65, Sec. 16.

veyances of land are": Civ. Code 1872, Sec. 178; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same except "as a grant of land is" for "as con-

Same: Record.

Sec. 2691. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

Historical: Rev. St. 1887, Sec. 2510.
 See 4 Ter. Ses. (1867) 65, Sec. 17.

Code 1872, Sec. 179; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Same: Effect of Record.

Sec. 2692. The recording or non-recording of such contract has a like effect as the recording or non-recording of a conveyance of real property.

Historical: Rev. St. 1887, Sec. 2511.
 See 4 Ter. Ses. (1867) 65, Sec. 18.

Civ. Code, 1872, Sec. 180; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same except "grant" for "conveyance," line 2:

Cross Reference: Effect of record of conveyance: Sec. 3159.

Same: Minor May Make Settlement.

Sec. 2693. A minor capable of contracting marriage may make a valid marriage settlement.

Historical: Rev. St. 1887, Sec. 2512.
 See 4 Ter. Ses. (1867) 65, Sec. 20.

Code 1872, Sec. 181; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

TITLE 3

PARENT AND CHILD

Chapter

1. Children by birth.

Chapter

2. Adoption.

CHAPTER 1.

CHILDREN BY BIRTH.

Section

2694. Allowance to parent for support.
2695. Reciprocal duties of support.
2696. Liability of parents for child's necessities.

Section

2697. Wages of minors.
2698. Custody of children after separation of parents.
2699. Legitimization of issue by marriage.

Allowance to Parent for Support.

Sec. 2694. The proper court may direct an allowance to be made to the parent of a child, out of its property for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Historical: Rev. St. 1887, Sec. 2530.
California Legislation: Same: Civ.

Code 1872, Sec. 201; Deering's Code, ib.; Kerr's Code, ib.

Reciprocal Duties of Support.

Sec. 2695. It is the duty of the father, the mother and the child or children of any poor person who is unable to maintain himself or herself by work, to maintain such poor person to the extent of his or her ability. Whenever any person shall apply for aid to any county within this State under its indigent laws, and it shall at any time appear to the county commissioners that said poor person has a father, mother, child or children who is able to maintain him or her, but fails so to do, it shall be the duty of the said commissioners to furnish all necessary aid and to bring a civil suit against such father, mother, child or children to recover the amount so expended, in the name of the county. The promise of an adult child to pay for necessities previously furnished to such parents is binding.

Historical: Rev. St. 1887, Sec. 2531, amended Laws 1897, 52, Sec. 1; re-enacted Laws 1899, 301, Sec. 1.

Liability of Parent for Child's Necessaries.

Sec. 2696. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

Historical: Rev. St. 1887, Sec. 2532.
California Legislation: Same: Civ.

Code 1872, Sec. 207; Deering's Code, ib.; Kerr's Code, ib.

Wages of Minors.

Sec. 2697. The wages of a minor employed in service may be paid to him, unless, within thirty days after the commencement of the service, the parent or guardian entitled thereto gives the employer notice that he claims such wages.

Historical: Rev. St. 1887, Sec. 2533.

California Legislation: Same: Civ. Code 1872, Sec. 212; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Wages of minor children living with wife who is separated from her husband belong to wife: Sec. 2683.

Custody of Children After Separation of Parents.

Sec. 2698. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this State, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the welfare of the child.

Historical: Rev. St. 1887, Sec. 2534.

California Legislation: Same except "by the rules prescribed in Sec. 246" for "by the welfare of the child",

last words: Civ. Code 1872, Sec. 214; Deering's Code, ib.; Kerr's Code, ib.

Cited: In re Miller (1896) 4 Ida. 711; 43 Pac. 870.

Legitimization of Issue by Marriage.

Sec. 2699. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

Historical: Rev. St. 1887, Sec. 2535. 9 Ter. Ses. (1877) 24, Sec. 21.

California Legislation: No such provision in Civ. Code 1872; same: Deering's Code, Sec. 215; Kerr's Code, ib.

Cross Reference: Legitimacy of children where marriage is annulled: Sec. 2642; in case of divorce for adultery of wife: Sec. 2669.

CHAPTER 2.

ADOPTION.

Section	Section
2700. Minors may be adopted.	2705. Proceedings on adoption.
2701. Restrictions as to comparative age.	2706. Order of adoption.
2702. Consent of husband and wife necessary.	2707. Effect of adoption.
2703. Consent of parents of child.	2708. Release of child's parents from obligation.
2704. Consent of child.	2709. Adoption of illegitimate child.

Minors May Be Adopted.

Sec. 2700. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

Historical: Rev. St. 1887, Sec. 2545. 10th Ter. Ses. (1879) 8, Sec. 1.

California Legislation: Same: Civ.

Code 1872, Sec. 221; Deering's Code, ib.; Kerr's Code, ib.

Restrictions as to Comparative Age.

Sec. 2701. The person adopting a child must be at least fifteen years older than the person adopted.

Historical: Rev. St. 1887, Sec. 2546.
10 Ter. Ses. (1879) 8, Sec. 2.

California Legislation: Same:

through "adopted": Civ. Code 1872,
Sec. 222; as amended: Deering's Code,
ib.; Kerr's Code, ib.

Consent of Husband and Wife Necessary.

Sec. 2702. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

Historical: Rev. St. 1887, Sec. 2547.
10 Ter. Ses. (1879) 8, Sec. 3.

California Legislation: Same

through "wife", line 2: Civ. Code
1872, Sec. 223; same as amended.
Deering's Code, ib.; Kerr's Code, ib.

Consent of Parents of Child.

Sec. 2703. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect. If it can be shown satisfactorily to the judge that the parent or parents have abandoned it, or ceased to provide for its support, then it may be adopted by the written consent of its legal guardian. If no guardian then of its nearest relative. If no relative then by the consent of some person appointed by the judge to act in the proceedings as the next friend to such child.

Historical: Rev. St. 1887, Sec. 2548.
Act Feb. 5, 1887; see 10 Ter. Ses.
(1879) 8, Sec. 4.

California Legislation: Same

through first sentence: Civ. Code 1872,
Sec. 224; as amended: Deering's Code,
ib.; Kerr's Code, ib.

Consent of Child.

Sec. 2704. The consent of a child, if over the age of twelve years, is necessary to its adoption.

Historical: Rev. St. 1887, Sec. 2549.
10 Ter. Ses. (1879) 8, Sec. 5.

California Legislation: Same: Civ.

Code 1872, Sec. 225; Deering's Code,
ib.; Kerr's Code, ib.

Proceedings on Adoption.

Sec. 2705. The person adopting a child, and the child adopted, and the other persons, if within or residents of the county, whose consent is necessary, must appear before the probate judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. But if the parent or guardian of the child, or either of them, is a non-resident of the county where the application is made, such non-resident parent or guardian may execute his consent in writing, and acknowledge the same before any officer authorized by the laws of this State to take acknowledgments of deeds, which consent being filed in the court where the application is made, is deemed a sufficient appearance on the part of such non-resident.

Historical: Rev. St. 1887, Sec. 2550.
10 Ter. Ses. (1879) 8, Sec. 6; amend-
ed 13 Ter. Ses. (1885) 25, Sec. 1.

California Legislation: Similar

through first sentence, rest omitted:
Civ. Code 1872, Sec. 226; similar as
amended: Deering's Code, ib.; fur-
ther amended: Kerr's Code, ib.

Order of Adoption.

Sec. 2706. The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

Historical: Rev. St. 1887, Sec. 2551.
10 Ter. Ses. (1879) 8, Sec. 7.

California Legislation: Same: Civ.

Code 1872, Sec. 227; Deering's Code,
ib.; similar with additional provi-
sion as amended: Kerr's Code, ib.

Effect of Adoption.

Sec. 2707. A child, when adopted, may take the name of the person adopting, and the two thenceforth sustain towards each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation.

Historical: Rev. St. 1887, Sec. 2552.
10 Ter. Ses. (1879) 8, Sec. 8.

California Legislation: Same except
"takes" for "may take", line 1: Civ.

Code 1872, Sec. 228; similar as
amended: Deering's Code, ib.; Kerr's
Code, ib.

Release of Child's Parents From Obligation.

Sec. 2708. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibilities for, the child so adopted, and have no right over it.

Historical: Rev. St. 1887, Sec. 2553.
10 Ter. Ses. (1879) 8, Sec. 9.

California Legislation: Same: Civ.

Code 1872, Sec. 229; Deering's Code,
ib.; Kerr's Code, ib.

Adoption of Illegitimate Child.

Sec. 2709. The father of an illegitimate child, by publicly acknowl-
edging it as his own, receiving it as such, with the consent of his
wife, if he is married, into his family, and otherwise treating it as
if it were a legitimate child, thereby adopts it as such; and such
child is thereupon deemed for all purposes legitimate from the time
of its birth. The foregoing provisions of this chapter do not apply
to such an adoption.

Historical: Rev. St. 1887, Sec. 2554.
10 Ter. Ses. (1879) 8, Sec. 10.

California Legislation: Same: Civ.

Code 1872, Sec. 230; Deering's Code,
ib.; Kerr's Code, ib.

TITLE 4

CORPORATIONS

Chapter

1. General provisions.
2. Railroad corporations.
3. Bridge, ferry, flume and boom corporations.
4. Telegraph, telephone and electric power corporations.
5. Water and canal corporations.
6. Homestead corporations.
7. Insurance companies.
8. Secret fraternal insurance societies.
9. Mutual co-operative insurance companies.

Chapter

10. Livestock insurance companies.
11. Surety and fidelity companies.
12. Guaranty, title and trust companies.
13. Banking corporations.
14. Religious, social and benevolent corporations.
15. Institutions of learning.
16. Agricultural fair companies.
17. Gas corporations.
18. Land and building corporations.

CHAPTER 1.

GENERAL PROVISIONS.

Article

1. Articles of incorporation.
2. By-laws.
3. Directors.
4. Meetings and elections.
5. Stock and stockholders.
6. Assessments on stock.
7. Powers of corporations.

Article

8. Corporate records.
9. Right of repeal.
10. Sale of franchise on execution.
11. Annual statement and license fee.
12. Miscellaneous provisions.
13. Foreign corporations.

Note: Constitutional provisions governing corporation: Const. Art. 11. Dissolution of corporations: Secs. 5185-5191. Criminal frauds in management of corporations: Secs. 7114-7128.

ARTICLE 1.

ARTICLES OF INCORPORATION.

Section

2710. Corporations classified.
2711. Private corporations: How formed.
2712. Purposes for which authorized.
2713. Articles of incorporation.
2714. Same: Contents.
2715. Same: For railroad, wagon road, telephone or telegraph.
2716. Subscribers to articles.
2717. Capital required of railroads, etc.

Section

2718. Same: Affidavit of subscription.
2719. Certificate of incorporation.
2720. Copy of articles as evidence.
2721. Record of articles by Secretary of State.
2722. Stockholders and members.
2723. Articles to be filed where real property is located.

Corporations Classified.

Sec. 2710. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private.

Historical: Rev. St. 1887, Sec. 2575.

California Legislation: Similar: Civ. Code 1872, Sec. 284; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: The term cor-

porations" includes associations and joint stock companies having or exercising any of the powers or privileges of corporations: Const. Art. 11, Sec. 16.

Private Corporations: How Formed.

Sec. 2711. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this title: *Provided*, One such person must be a bona fide resident of this State.

Historical: Rev. St. 1887, Sec. 2576; amended Laws 1899, 404, Sec. 1; amended Laws 1907, 540, Sec. 1.

California Legislation: See Civ.

Code 1872, Sec. 285; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Purposes for Which Authorized.

Sec. 2712. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

Historical: Rev. St. 1887, Sec. 2577.

California Legislation: Different: Civ. Code 1872, Sec. 286; same as

amended: Deering's Code, ib.; Kerr's Code, ib.

Articles of Incorporation.

Sec. 2713. The instrument by which a private corporation is formed is called "Articles of Incorporation."

Historical: Rev. St. 1887, Sec. 2578.

California Legislation: Same: Civ.

Code 1872, Sec. 289; Deering's Code, Code, ib.; Kerr's Code, ib.

Same: Contents.

Sec. 2714. Articles of incorporation must be prepared setting forth:

1. The name of the corporation.
2. The purpose for which it was formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding fifty years.
5. The number of its directors or trustees: *Provided*, At any time during the existence of the corporation, the number of directors may be increased, in corporations for profit, by amendment of the articles of incorporation by a majority of the stockholders thereof, to any number not exceeding fifteen, who must be stockholders of the corporation, which amendment, when adopted, must be filed in the manner provided for the filing of original articles of incorporation, and thereupon said amendment shall be and become in force and effect as if originally provided in the original articles of incorporation.
6. The amount of its capital stock and the number of shares into which it is divided.
7. If there is a capital stock, the amount actually subscribed, and by whom.
8. Any corporation organized or existing, or hereafter organized or existing, under the laws of this State, may, instead of electing its entire board of directors annually, as now required by law, provide in its articles of incorporation, or by amendment to its articles of

incorporation, for the election of one-third of the number of its directors for a term of one year, one-third therefor for a term of two years, and one-third thereof for a term of three years, and thereafter at each succeeding annual meeting of the stockholders, one-third thereof for a term of three years.

Historical: Rev. St. 1887, Sec. 2579 (see 1 Ter. Ses. (1864) 543, Sec. 2): amended Laws 1905, 161, Sec. 1.

California Legislation: Same, omit-

ting Subd. 8 and the proviso to Subd. 5: Civ. Code 1872, Sec. 290; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Same: For Railroad, Wagon Road, Telephone or Telegraph.

Sec. 2715. The articles of incorporation of any railroad, wagon road, telephone or telegraph organization must also state:

1. The kind of road, telephone or telegraph intended to be constructed.

2. The place from and to which it is intended to be run, and all the intermediate branches: *Provided*, That this subdivision shall not apply to railroad, telegraph or telephone corporations.

3. The estimated length of the road, telephone or telegraph line.

4. Every such corporation may provide in its articles of incorporation the number of directors which shall constitute a quorum for the transaction of business, and that every decision by a majority of such quorum of the board shall be valid as a corporate act.

5. That all the meetings of the board of directors may be held at the principal office of the corporation in this State, or at such other place or places within or without this State for the transaction of any business of the corporation as the directors may, by resolution or by the by-laws, provide.

6. That at least one member of the board of directors shall be a resident of this State, and that no other qualification as to residence of the directors shall be necessary.

7. That the articles of incorporation of any such corporation now existing, or that may hereafter be organized under the laws of this State, may be amended in any respect conformable to the laws of this State by a vote representing at least a majority of the outstanding capital stock thereof, at a stockholders' meeting called for that purpose, as provided by Section 2724 of this Code: *Provided*, That the original purposes of the corporation shall not be altered nor shall the capital stock be diminished to an amount less than fifty per cent in excess of the indebtedness of the corporation: *And, Provided, further*, That the personal or individual liability of the holder of fully paid capital stock for assessments, or for obligations of the corporation, shall not be changed without the consent of all the stockholders.

8. That stockholders shall not be individually liable for the debts of the corporation.

9. That railroad corporations organized and existing, or hereafter organized and existing, under the laws of this State, shall be subject to all the duties imposed by the terms of this section, and shall have and possess all the powers and privileges conferred by the laws under which said corporations were organized, or which are contained in their articles of incorporation.

Historical: Rev. St. 1887, Sec. 2580; amended Laws 1905, 161, Sec. 2. The proviso to Subd. 2 is inserted on the authority of Laws 1907, 472, which provides that "the articles of incorporation of railroad, telegraph and telephone corporations need not specify the points between which the works are to be built nor the inter-

mediate branches thereof." The subdivision is in force as to wagon roads.

California Legislation: Same through Subd. 3 except "telephone" omitted throughout, other provisions different: Civ. Code 1872, Sec. 291; Deering's Code, ib.; Kerr's Code, ib.

Subscribers to Articles.

Sec. 2716. The articles of incorporation must be subscribed by three or more persons, one of whom must be a bona fide resident of this State, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

Historical: Rev. St. 1887, Sec. 2581; amended Laws 1905, 161, Sec. 3.

California Legislation: Similar: Civ.

Code 1872, Sec. 292; as amended; Deering's Code, ib.; as amended; Kerr's Code, ib.

Capital Required of Railroads, Etc.

Sec. 2717. Each intended railroad, wagon road or telegraph corporation, before filing articles of incorporation, must have actually subscribed to its capital stock for each mile of the contemplated work, the following amount, to-wit:

1. One thousand dollars per mile of railroads;
2. One hundred dollars per mile of telegraph lines;
3. Three hundred dollars per mile of wagon roads.

Historical: Rev. St. 1887, Sec. 2582.

California Legislation: Same except "corporation named in Section 291" for "railroad, wagon road or tele-

graph corporation" line 1: Civ. Code 1872, Sec. 293; Deering's Code, ib.; Kerr's Code, ib.

Same: Affidavit of Subscription.

Sec. 2718. Before the Secretary of State or the recorder of the county issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary or treasurer named in the articles, that the amount of the capital stock thereof required by law has been actually subscribed.

Historical: Rev. St. 1887, Sec. 2583.

California Legislation: Similar: Civ.

Code 1872, Sec. 295; Deering's Code, ib.; Kerr's Code, ib.

Certificate of Incorporation.

Sec. 2719. Upon filing the articles of incorporation in the office of the county recorder of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county recorder, with the Secretary of State, and filing the affidavit mentioned in the last section, when such affidavit is required, the Secretary of State or such county recorder must issue to the corporation, over his official seal, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons executing the articles and their associates and successors shall be a body politic and corporate, by the name stated in the articles, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or by the law otherwise specially provided.

Historical: Rev. St. 1887, Sec. 2584.

California Legislation: Similar: Civ. Code 1872, Sec. 296; similar as amended but "county clerk" for "county recorder": Deering's Code, ib.; further amended: Kerr's Code, ib.

Cross Reference: Term of existence of homestead corporations: Sec. 2845. Record of articles and certificate of incorporation of mutual co-operative insurance companies: Sec. 2906.

Copy of Articles as Evidence.

Sec. 2720. A copy of any articles of incorporation filed in pursuance of this title and certified by the Secretary of State, or the recorder of the proper county, must be received in all courts and other places as *prima facie* evidence of the facts therein stated.

Historical: Rev. St. 1887, Sec. 2585. See 1 Ter. Ses. (1864) 543, Sec. 3.

California Legislation: Similar: Civ.

Code 1872, Sec. 297; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Record of Articles by Secretary of State.

Sec. 2721. All articles of incorporation hereafter filed in the office of the Secretary of State, and certificates of increase and decrease in the capital stock thereof, together with certificates of all other changes in said articles of incorporation provided by law, shall be recorded by the Secretary of State in books provided therefor, which books shall be properly indexed: *Provided, however,* That this section shall not be construed to require the recording of foreign articles of incorporation.

Historical: Laws 1907, 555, Sec. 1.

Stockholders and Members.

Sec. 2722. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

Historical: Rev. St. 1887, Sec. 2586.

California Legislation: Same: Civ.

Code 1872, Sec. 298; Deering's Code, ib.; Kerr's Code, ib.

Articles to Be Filed Where Real Property Is Located.

Sec. 2723. No corporation formed under the provisions of this title shall purchase, locate or hold property in any county of this State without filing a certified copy of its articles of incorporation in the office of the county recorder of the county in which such property is situated, within sixty days after such purchase or location is made. Any corporation failing to comply with the provisions of this section must not, while so in default, maintain or defend any action or proceeding in relation to such property.

Historical: Rev. St. 1887, Sec. 2587. Omitting "and every corporation now in existence must, within ninety days after the passage of this title file a certified copy," etc., as now obsolete.

California Legislation: No such provision in the Civ. Code 1872; similar as amended: Deering's Civ. Code, Sec. 299; Kerr's Code, ib.

ARTICLE 2.

BY-LAWS.

Section

2724. By-laws to be adopted.

2725. Provision for election of directors.

Section

2726. Contents of by-laws.

2727. Book of by-laws: Amendment of by-laws.

By-Laws to Be Adopted.

Sec. 2724. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the laws of Congress and of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and if such meeting be called, two weeks' notice of the same, by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or, if none be published therein, then in a paper published at the capital of the State, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock subscribed, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

Historical: Rev. St. 1887, Sec. 2588.
California Legislation: See Civ.
Code 1872, Sec. 301; similar as

amended: Deering's Code, ib.; Kerr's
Code, ib.

Provision for Election of Directors.

Sec. 2725. The directors of corporations must be elected annually by the stockholders or members, except that they may be classified and elected for the terms provided for in the articles of incorporation of said corporation as permitted by Section 2714, and if no provision is made in the by-laws for the time of the election of directors, the election must be held on the first Tuesday in June. Notice of the meeting of stockholders for the election of directors must be given by an advertisement thereof for two weeks in some newspaper published in the county in which the principal place of business of the corporation is located, or, if none be published therein, then in a newspaper published at the capital of the State.

Historical: Rev. St. 1887, Sec. 2589
(see 1 Ter. Ses. (1864) 543, Sec. 5);
amended Laws 1905, 161, Sec. 4.

California Legislation: See Civ.
Code 1872, Sec. 302; Deering's Code,
ib.; as amended: Kerr's Code, ib.

Contents of By-Laws.

Sec. 2726. A corporation may, by its by-laws, where no other provision is specially made, provide, among other things:

1. The time, place and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election of directors, and the mode and manner of giving notice thereof, in addition to that prescribed by Section 2724;
5. The duties and compensation of officers;
6. The manner of election, and the term of office, of all officers other than the directors;
7. The time and place of holding meetings of the board of directors, either within or without this State;
8. Suitable penalties for violation of by-laws, not exceeding in any case one hundred dollars for any one offense.

Historical: Rev. St. 1887, Sec. 2590; amended Laws 1905, 161, Sec. 5.

California Legislation: Similar: Civ. Code 1872, Sec. 303; as amended:

Deering's Code, ib.; further amended: Kerr's Code, ib.

Cross Reference: By-laws of home-
stead corporation: Sec. 2846.

Book of By-Laws: Amendment of By-Laws.

Sec. 2727. All by-laws adopted must be certified by a majority of the directors and the secretary of the corporation, and copied in a legible hand in some book kept in the principal office of the corporation in this State, to be known as the "Book of By-Laws," and no by-laws shall take effect until so copied, and the book shall be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting, or at any meeting of the stockholders or members called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or two-thirds of the members when there is no capital stock, or the power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the board of directors. This power, when so delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-laws be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, must be stated in the said book, and until so stated the repeal must not take effect.

Historical: Rev. St. 1887, Sec. 2591; amended Laws 1907, 571, Sec. 1.

California Legislation: See Civ. Code 1872, Sec. 304; similar as

amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cited: Mapleton Bank v. Standrod (1902) 8 Ida. 740; 71 Pac. 119.

ARTICLE 3.

DIRECTORS.

Section		Section	
2728.	Constitution and powers of board of directors.	2732.	Prohibitions respecting dividends and capital.
2729.	Election of directors.	2733.	Removal of directors.
2730.	Same: How conducted.		
2731.	Organization and officers of board.		

Constitution and Powers of Board of Directors.

Sec. 2728. The corporate powers, business and property of all corporations formed under this title, must be exercised, conducted and controlled by a board of not less than three nor more than fifteen directors, to be elected from among the holders of the stock, or when there is no capital stock, then from among the members of such corporation. At least one of the directors must, in all cases, be a citizen and actual bona fide resident within this State: *Provided*, That the articles of incorporation or amended articles of incorporation of any railroad, wagon road, telephone or telegraph organization may fix the numbers of members who shall constitute a quorum of the board of directors, who shall have all the powers of the full board. Directors of corporations for profit must be holders of the stock

thereof in an amount to be fixed by the by-laws. Directors of all other corporations must be members thereof. Unless a majority is present and acting, no business performed, or act done, by the board of directors is valid as against the corporation: *Provided*, That a quorum of the board of directors of any railroad, wagon road, telephone or telegraph corporation, as fixed by its articles of incorporation, may have and exercise all the powers of the board of directors. Whenever a vacancy occurs in the board of directors, unless otherwise provided by the by-laws, such vacancy must be filled by the board or by a quorum thereof.

The board of directors of any railroad, wagon road, telephone or telegraph organization may appoint an executive committee of its members equal in number to a quorum of the board, and such committee shall have all the powers, rights and privileges of the board of directors, and may meet at such times and places as the board of directors may by resolution or by the by-laws prescribe, and the acts of such committee shall be in all matters be valid as against the corporation.

Historical: Rev. St. 1887, Sec. 2592;
amended Laws 1905, 161, Sec. 6.

California Legislation: See Civ.

Code 1872, Sec. 305; as amended:
Deering's Code, ib.; Kerr's Code, ib.

Election of Directors.

Sec. 2729. At the first meeting of the stockholders held after the organization of the corporation, or at such subsequent meeting as may be called and held for such purpose, directors must be elected to hold their offices for one year and until their successors are elected and qualified; except that they may be classified and elected for the terms provided for in the articles of incorporation, or, if no such provision is made in the articles of incorporation of such corporations, then the board of directors shall be elected for one year.

Historical: Rev. St. 1887, Sec. 2593.
amended Laws 1905, 161, Sec. 7.

California Legislation: See Civ.

Code 1872, Sec. 306; as amended:
Deering's Code, ib.; repealed 1889.

Same: How Conducted.

Sec. 2730. All elections of directors must be by ballot, and the vote of the stockholders representing a majority of the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to a choice. If there be capital stock in the corporation, each stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors shall not be elected in any other manner.

Historical: Rev. St. 1887, Sec. 2594
(see 1 Ter. Ses. (1864) 543, Sec. 5);
amended Laws 1907, 540, Sec. 2.

California Legislation: Similar
through first paragraph, rest omitted:

Civ. Code 1872, Sec. 307; as amended:
Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Stockholders may
vote in person or by proxy for the
number of shares owned by them for

as many persons as there are directors or managers to be elected, or may cumulate the shares in favor of one

or more candidates: Const. Art. 11, Sec. 4.

Organization and Officers of Board.

Sec. 2731. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and a treasurer. They must perform the duties enjoined upon them by law and by the by-laws of the corporation. A majority of the directors, or in the case of any railroad, wagon road, telephone or telegraph organization, a quorum of the board of directors, as fixed by the articles of incorporation, is a sufficient number to form a board for the transaction of business, and every decision of such a quorum or of a majority of the directors forming such board, made when duly assembled, is a valid corporate act, as though made by a majority of all of the directors of the corporation.

Historical: Rev. St. 1887, Sec. 2595; amended Laws 1905, 161, Sec. 8.

California Legislation: Similar: Civ. Code 1872, Sec. 308; Deering's Code, ib.; Kerr's Code, ib.

Cited: Sparks v. Lower Payette Ditch Co. (1892) 3 Ida. 306; 29 Pac. 134.

Prohibitions Respecting Dividends and Capital.

Sec. 2732. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they reduce or increase the capital stock, except as in this title specially provided. For a violation of the provisions of this section, the directors, under whose administration the same may have occurred (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or, when not present, when the same did occur) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Historical: Rev. St. 1887, Sec. 2596. See 1 Ter. Ses. (1864) 543, Sec. 13.

California Legislation: Similar: Civ.

Code 1872, Sec. 309; Deering's Code, ib.; similar with additional provisions as amended: Kerr's Code, ib.

Removal of Directors.

Sec. 2733. No director can be removed from office unless by a vote of the stockholders holding two-thirds of the capital stock, or of two-thirds of the members, where there is no capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders or members for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such call must be in writing and addressed to the secretary, who must thereupon give notice of the time, place and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is

none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in Section 2724 of this title, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

Historical: Rev. St. 1887, Sec. 2597.	Code 1872, Sec. 310; Deering's Code,
California Legislation: Similar: Civ.	ib.; as amended: Kerr's Code; ib.

ARTICLE 4.
MEETINGS AND ELECTIONS.

Section	Section
2734. Justice of the peace may call meeting.	2740. Meetings by consent.
2735. Quorum, proxies and adjournments.	2741. Same: Business which may be transacted.
2736. Representation of stock of minors and estates.	2742. Place of holding meetings.
2737. Adjourned elections.	2743. Manner of calling meetings.
2738. Judicial review of elections.	2744. Change of place of business.
2739. Liability for false certificates and reports.	

Justice of the Peace May Call Meeting.

Sec. 2734. Whenever from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders, or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a secretary is chosen and qualified, if there is no officer present legally authorized to preside thereat.

Historical: Rev. St. 1887, Sec. 2598. See 6 Ter. Ses. (1871) 51, Sec. 1.	"other" inserted before "officer" line 9; Civ. Code 1872, Sec. 311; Deering's Code, ib.; additional provision as amended: Kerr's Code, ib.
California Legislation: Same except "clerk" for "secretary," line 8, and	

Quorum, Proxies and Adjournments.

Sec. 2735. At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock, or of the members, when there is no capital stock, represented either in person, or by proxy, in writing. Every person acting therein in person, or by proxy, or by representative, must be a member thereof, or a *bona fide* stockholder, having stock in his own name on the stock books of the corporation, at least ten days prior to the election. Any vote or election had otherwise than in accordance with the provisions of this title, is voidable at the instance of absent stockholders or members, and may be set aside by petition to the District Court of the county where the same was held or to the Judge of said court at his chambers. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if from any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had. Such ad-

journalment and the reasons thereof shall be recorded in the journal of proceedings of the board of directors.

Historical: Rev. St. 1887, Sec. 2599.
California Legislation: Similar: Civ.
 Code 1872, Sec. 312; as amended:

Deering's Code, ib.; further amended:
 Kerr's Code, ib.

Representation of Stock of Minors and Estates.

Sec. 2736 The shares of stock of an estate of a minor or insane person may be represented by his guardian, and of a deceased person by his executor or administrator.

Historical: Rev. St. 1887, Sec. 2600.
 See 1 Ter. Ses. (1864) 543, Sec. 11.
California Legislation: Similar: Civ.

Code 1872, Sec. 313; same as amended:
 Deering's Code, ib.; Kerr's Code, ib.

Adjourned Elections.

Sec. 2737. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter, as may be provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered, a meeting may be called by the stockholders, as provided in Section 2733 of this title.

Historical: Rev. St. 1887, Sec. 2601.
 See 1 Ter. Ses. (1864) 543, Sec. 6.
California Legislation: Similar: Civ.

Code 1872, Sec. 314; Deering's Code, ib.; as amended; Kerr's Code, ib.

Judicial Review of Elections.

Sec. 2738. Upon the application of any person, or body corporate, aggrieved by any election held by any corporate body, or any proceedings relating to any such election, the District Judge of the district in which such election is held, must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before the proceedings are had under this section, five days' notice thereof must be given to the adverse party, or to those to be affected thereby, if found within the State.

Historical: Rev. St. 1887, Sec. 2602.
California Legislation: Similar: Civ.
 Code 1872, Sec. 315; as amended:

Deering's Code, ib.; further amended:
 Kerr's Code, ib.

Liability for False Certificates and Reports.

Sec. 2739. Any officer of a corporation, who wilfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, is liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they are jointly and severally so liable.

Historical: Rev. St. 1887, Sec. 2603.
California Legislation: Similar: Civ.
 Code 1872, Sec. 316; as amended:
 Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Making a false report a misdemeanor: Sec. 7121.

Meetings by Consent.

Sec. 2740. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and notified.

Historical: Rev. St. 1887, Sec. 2604.
California Legislation: Same: Civ.

Code 1872, Sec. 317; Deering's Code, ib.; Kerr's Code, ib.

Same: Business Which May Be Transacted.

Sec. 2741. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

Historical: Rev. St. 1887, Sec. 2605.
California Legislation: Same: Civ.

Code 1872, Sec. 318; Deering's Code, ib.; Kerr's Code, ib.

Place of Holding Meetings.

Sec. 2742. All meetings of the stockholders and members of the corporation shall be held at the office of the corporation at its principal place of business within this State. Meetings of the board of directors of the corporation, or of its executive committee, may be held at the principal place of business of the corporation in this State: *Provided*, That when so provided for in the articles of incorporation, or amended articles of incorporation, or by the by-laws, or by resolution of the board of directors, meetings of the board of directors and of the executive committee may be held for the transaction of any business of the corporation, at any place outside of this State, or elsewhere within this State, than at its principal place of business.

Historical: Rev. St. 1887, Sec. 2606;
 amended Laws 1905, 161, Sec. 9.
California Legislation: See Civ.

Code 1872, Sec. 319; Deering's Code, ib.; Kerr's Code, ib.

Manner of Calling Meetings.

Sec. 2743. When no provision is made in the by-laws for regular meetings of the directors, and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given by the secretary to each director, if within the State, on the order of the president, or if there be none, on the order of two directors.

Historical: Rev. St. 1887, Sec. 2607.
California Legislation: Similar: Civ.

Code 1872, Sec. 320; Deering's Code, ib.; Kerr's Code, ib.

Change of Place of Business.

Sec. 2744. Every corporation that has been or may be created under the general laws of this State, may change its principal place of business from one place to another within this State. Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock, or of two-thirds of the members, when there is no capital stock, must be obtained and filed, notice of such intended removal or change must be published, at least once a week, for three successive weeks, as provided in Section 2724, giving the name of the county where it is situated, and that to which it is intended to remove.

Historical: Rev. St. 1887, Sec. 2608.
California Legislation: No such provision in Civ. Code 1872; similar:

Deering's Code, Sec. 321; as amended:
 Kerr's Code, Sec. 321a.

ARTICLE 5.
STOCK AND STOCKHOLDERS.

Section	Section
2745. Personal liability of stockholders.	2748. Same: By married woman.
2746. Issuance of certificates.	2749. Same: By non-resident stockholders.
2747. Transfer of shares.	

Note: Increase or diminution of capital stock: Sec. 2773.

Personal Liability of Stockholders.

Sec. 2745. Each stockholder of a corporation is individually and personally liable for its debts and liabilities to the full amount unpaid upon the par or face value of the stock or shares owned by him. Any creditor of the corporation may institute actions against any of its stockholders jointly or severally, and in such action the court must determine the amount unpaid upon the stock held or owned by each defendant, and a several judgment must be entered against him for a sum not exceeding such amount. Nothing in this title must be construed to render any stockholder individually or personally liable, as such stockholder, for debts or liabilities of the corporation, either at the suit of a creditor or for assessments or calls, to an amount exceeding the balance unpaid upon his stock, or the difference between the amount that has been actually paid upon his stock and the par or face value thereof, except when so liable on the ground of fraud or misrepresentation, or concealment, or for neglect or misconduct as an officer, agent, stockholder or member of the corporation. No corporation shall issue any stock as paid up, in whole or in part, or credit any amount, assessment or call as paid upon any of its stock, except for money, property, labor or services actually received by the corporation, or actually paid upon the indebtedness of the corporation as provided in this section, to the full value of the amount credited upon such stock. If any stockholder of any insolvent corporation pays the full amount unpaid upon the stock held by him, as above defined, upon the overdue debts of the corporation, incurred while he was such stockholder, he is relieved from any further personal liability upon his stock, but not from any liability for fraud, neglect or misconduct. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred by the corporation; and such liability is not released or discharged by any subsequent transfer of stock. When such liability does not arise upon contract it shall be deemed to be incurred when judgment thereof is obtained against the corporation. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and, also, to every person who has advanced the installments or purchase money, or subscribed for stock, in the name of a minor, so long as the latter remains a minor; and, also, to every guardian of trustee who volun-

tarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee are not liable under the provisions of this section, by reason of any such investment; nor is the person for whose benefit such investment is made responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period, or while the investment continues. Stock held as collateral security, or by a trustee who is not the beneficial owner, or in any other representative capacity without a beneficial interest, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation, but the pledgor, or person, or estate represented is to be deemed the stockholder, as respects such liability. Members of corporations not organized for profit and having no capital stock are not individually or personally liable for its debts or liabilities, unless such liability is imposed by the by-laws of the corporation, and then only to the extent so imposed; any such liability may be enforced, to the extent imposed by the by-laws, by joint or several actions against members, as before provided. The liability of each stockholder of a corporation not formed under the laws of this State, but doing business within the State, is the same as the liability of stockholders of corporations organized under the laws of this State.

All corporations doing business in this State, whether organized under the laws of this State or some other State, desiring to avail themselves of the provisions of this section, shall cause to be written or printed after the corporate name, on its stock certificates, letter and bill heads, and all its official documents the word "limited"; also, after the corporate signature to all official or public documents the word "limited."

Historical: Rev. St. 1887, Sec. 2609 (see 1 Ter. Ses. (1864) 543, Sec. 16); amended Laws 1890-91, 172, Secs. 1, 2; re-enacted Laws 1899, 115, Secs. 1, 2.

California Legislation: Same: Civ. Code 1872, Sec. 322; Deering's Code, ib.; repealed, 1905.

Cross Reference: Counties and municipal corporations not to become stockholders in corporations: Const. Art. 12, Sec. 4. Stockholders not individually liable over amount of stock owned by them: Const. Art. 11, Sec. 17. Liability of stockholders in banks: Sec. 2979.

Application to Existing Corporations—Constitutionality: The liability of a shareholder in a corporation under this section and the following sections, which provide for an assessment against the stock of a corporation, is substantially the same as the liability imposed upon shareholders by the corporation act of 1875 (Rev. Laws 1874-75, p. 618) except that by this section, and the sections providing for an assessment, an additional remedy to the remedy by action authorized by the former act, is given.

Consequently these provisions of the Revised Statutes are not, as applied to pre-existing corporations, an unconstitutional impairment of the contract rights of the shareholders in such corporations. Sparks v. Lower Payette Ditch Co. (1892) 3 Ida. 306; 29 Pac. 134.

Same — Insolvent Corporations: Stockholders in a corporation are not liable to creditors under this section as amended, where the corporation became insolvent and went out of business prior to the enactment of the amendment, but their liability is governed by the terms of the original section prior to the amendment. Aulbach v. Dahler (1896) 4 Ida. 654; 43 Pac. 322.

Liability to Assessment: This section refers to the personal liability of stockholders, and not to the liability of stock to assessments made necessary, not only to carry out the purposes for which the corporation was created, but to preserve its property. Hall v. Eagle Rock & Willow Creek Water Co. (1897) 5 Ida. 551; 51 Pac. 110.

Issuance of Certificates.

Sec. 2746. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

Historical: Rev. St. 1887, Sec. 2610.

California Legislation: Same: Civ. Code 1872, Sec. 323; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Cross Reference: Corporations prohibited from issuing stocks or bonds except for labor done, services performed or money or property actually received: Const. Art. 11, Sec. 9.

Transfer of Shares.

Sec. 2747. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the proprietor, or his attorney, or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the name of the parties by and to whom transferred, the number and designation of the shares, and the date of the entry. Corporations may, by by-laws, provide that no transfer of their stock shall be made upon their books until all indebtedness to the corporation of the person in whose name the stock stands, whether for assessments, calls or otherwise, is paid.

Historical: Rev. St. 1887, Sec. 2611.

California Legislation: Similar through first sentence: Civ. Code 1872, Sec. 324; Deering's Code, ib.; as amended: Kerr's Code, ib.

Shares Are Personalty: Certificates of shares of stock in an incorporated canal or ditch company are personal property. *Watson v. Molden* (1905) 10 Ida. 570; 79 Pac. 503.

Transfer—Necessity of Registration: The liability of stockholders of a corporation to creditors imposed by Rev. St. Sec. 2609, is not affected by sale of the stock, unless the transfer is entered on the books of the corporation as prescribed by this section. *Aulbach v. Dahler* (1896) 4 Ida. 654; 43 Pac. 322.

Same: By Married Woman.

Sec. 2748. Shares of stock in corporations, held or owned by a married woman, may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a *feme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation, owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

Historical: Rev. St. 1887, Sec. 2612.

California Legislation: Same: Civ. Code 1872, Sec. 325; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Cited: *Bassett v. Beam* (1894) 4 Ida. 106; 36 Pac. 501.

Same: By Non-Resident Stockholders.

Sec. 2749. When shares of stock in a corporation are owned by

a non-resident of the State, the president, secretary or directors of the corporation, before entering any transfer of the shares on its books, or issuing certificate therefor to the transferee, may require satisfactory evidence that the non-resident owner was alive at the date of the transfer, and if such satisfactory evidence be not furnished, may require a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or approved by the Judge of the District Court of the district in which the principal office of the corporation is situate, conditioned to protect the corporation against any liability to the heirs or legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof is liable for refusing to enter the transfer on the books of the corporation.

Historical: Rev. St. 1887, Sec. 2613.

California Legislation: Similar: Civ. Code 1872, Sec. 326; similar as

amended: Deering's Code, ib.; as further amended: Kerr's Code, ib.

ARTICLE 6.

ASSESSMENTS ON STOCK.

Section

- 2750. Directors may levy assessments.
- 2751. Limitation on assessments.
- 2752. Same: Previous uncollected assessments.
- 2753. Order levying assessment.
- 2754. Notice of assessment.
- 2755. Same: Publication.
- 2756. Delinquent notice.
- 2757. Same: Additional requirements.
- 2758. Same: Publication.

Section

- 2759. Delinquent stock may be sold.
- 2760. Conduct of sale.
- 2761. Purchaser.
- 2762. Corporation may purchase.
- 2763. Same: Effect of purchase.
- 2764. Postponement of sale.
- 2765. Defective proceedings.
- 2766. Actions to recover stock sold.
- 2767. Proof of publication.
- 2768. Collection of assessment by action.

Directors May Levy Assessments.

Sec. 2750. The directors of any corporation formed or existing under the laws of this State, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent, herein provided.

Historical: Rev. St. 1887, Sec. 2614.

California Legislation: Similar: Civ. Code 1872, Sec. 331; same as amended except "provided herein" for "herein provided", last words: Deering's Code, ib.; Kerr's Code, ib.

Cited: Sparks v. Lower Payette Ditch Co. (1892) 3 Ida. 306; 29 Pac. 134.

Unlawful Assessment—Action: In an action against a corporation for

the wrongful selling of stock of a shareholder, the burden is on the corporation to show a compliance with this section before attempting to assess and sell the plaintiff's stock, by showing that one-fourth of its stock had been subscribed, and the complaint in such an action is not demurrable for failure to allege that one-fourth of the stock had not been subscribed. Corcoran v. Sonora etc. Co. (1902) 8 Ida. 651; 71 Pac. 127.

Limitation on Assessments.

Sec. 2751. No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per centum per month, unless in the articles of incorporation it is otherwise provided;

3. The directors of fire insurance corporations may assess such a percentage of the capital stock as they deem proper.

Historical: Rev. St. 1887, Sec. 2615.

California Legislation: Similar: Civ. Code 1872, Sec. 332; Deering's Code, ib.; Kerr's Code, ib.

Cited: Sparks v. Lower Payette Ditch Co. (1892) 3 Ida. 306; 29 Pac. 134.

Same: Previous Uncollected Assessment.

Sec. 2752. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this title for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of one of the subdivisions of the last preceding section.

Historical: Rev. St. 1887, Sec. 2616.

California Legislation: Similar: Civ. Code 1872, Sec. 333; Deering's Code, ib.; Kerr's Code, ib.

Cited: Sparks v. Lower Payette Ditch Co. (1892) 3 Ida. 306; 29 Pac. 134.

Order Levying Assessment.

Sec. 2753. The order levying an assessment must specify the amount thereof, when, to whom and where payable; fix the day subsequent to the full term of publication of the assessment notice, on which the unpaid assessments will be delinquent, not less than thirty or more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Historical: Rev. St. 1887, Sec. 2617.

California Legislation: Similar: Civ. Code 1872, Sec. 334; Deering's Code, ib.; Kerr's Code, ib.

Cited: Corcoran v. Sonora etc. Co. (1902) 8 Ida. 651; 71 Pac. 127.

Notice of Assessment.

Sec. 2754. Upon the making of the order the secretary must cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date) an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment remains unpaid on the (day fixed) will be delinquent, and advertised for sale at public auction, and unless payment is made before, will be sold on the (day

appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale. (Signature of secretary with location of office.)

Historical: Rev. St. 1887, Sec. 2618.
California Legislation: Same: Civ.

Code 1872, Sec. 335; Deering's Code, ib.; Kerr's Code, ib.

Same: Publication.

Sec. 2755. The notice must be published once a week, for four successive weeks, in some newspaper of general circulation published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if situated in a different county and a paper be published therein. If there be no newspaper published in the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published at the capital of the State.

Historical: Rev. St. 1887, Sec. 2619.

California Legislation: Similar: Civ.
Code 1872, Sec. 336; different as

amended: Deering's Code, ib.; Kerr's Code, ib.

Delinquent Notice.

Sec. 2756. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice heretofore provided for was published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)

Notice:—There is delinquent upon the following described stock on account of assessment levied on the (date), (and assessments previous thereto, if any), the several amounts set opposite the names of the respective shareholders as follows: (names, number of certificate, number of shares, amount.) And in accordance with law, so many shares of each parcel of such stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with the cost of advertising and expenses of the sale. (Name of secretary, with location of office).

Historical: Rev. St. 1887, Sec. 2620.
California Legislation: Similar: Civ.

Code 1872, Sec. 337; Deering's Code, ib.; Kerr's Code, ib.

Same: Additional Requirements.

Sec. 2757. The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except when certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon must be stated.

Historical: Rev. St. 1887, Sec. 2621.

California Legislation: Same except
"together with the fact that certificates for such shares have not been

issued" inserted after "thereon", line 4; Civ. Code 1872, Sec. 338; Deering's Code, ib.; Kerr's Code, ib.

Same: Publication.

Sec. 2758. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and legal holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

Historical: Rev. St. 1887, Sec. 2622.

California Legislation: Same except "legal", line 2, omitted: Civ. Code

1872, Sec. 339; Deering's Code, ib.; Kerr's Code, ib.

Delinquent Stock May Be Sold.

Sec. 2759. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale, upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of advertising and sale.

Historical: Rev. St. 1887, Sec. 2623.

California Legislation: Same except "advertising and", last line, omitted: Civ. Code 1872, Sec. 340; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Sale of stock of homestead corporation for delinquency: Sec. 2847.

Conduct of Sale.

Sec. 2760. On the day, at the place, and at the time, appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell, or cause to be sold at public auction to the highest bidder, for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

Historical: Rev. St. 1887, Sec. 2624.

California Legislation: Same: Civ.

Code 1872, Sec. 341; Deering's Code, ib.; Kerr's Code, ib.

Purchaser.

Sec. 2761. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share, is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

Historical: Rev. St. 1887, Sec. 2625.

California Legislation: Same: Civ.

Code, 1872, Sec. 342; Deering's Code, ib.; Kerr's Code, ib.

Corporation May Purchase.

Sec. 2762. If at the sale of stock, no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president or any director thereof, at the amount of the assessment, charges and costs due; and said amount must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation made. While the stock remains the property of the corporation it is not assessable, nor must any dividend be declared

thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

Historical: Rev. St. 1887, Sec. 2626.
California Legislation: Similar: Civ.

Code 1872, Sec. 343; Deering's Code, ib.; Kerr's Code, ib.

Same: Effect of Purchase.

Sec. 2763. All purchases of its own stock made by any corporation, vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws, on vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation, it shall not be voted upon, but a majority of the remaining shares is a majority of the stock for all purposes of election or voting.

Historical: Rev. St. 1887, Sec. 2627.
California Legislation: Similar: Civ.

Code 1872, Sec. 344; Deering's Code, ib.; Kerr's Code, ib.

Postponement of Sale.

Sec. 2764. The dates fixed in any notice of assessment or notice of delinquent sale, published as aforesaid, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no such order is effectual unless notice of such extension or postponement is appended to, and published with, the notice to which the order relates.

Historical: Rev. St. 1887, Sec. 2628.
California Legislation: Similar: Civ.

Code 1872, Sec. 345; Deering's Code, ib.; Kerr's Code, ib.

Defective Proceedings.

Sec. 2765. No assessment is invalidated by a failure to make publication of the notices, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings except the levying of assessment, are void, and publication must begin anew.

Historical: Rev. St. 1887, Sec. 2629.
California Legislation: Similar: Civ.

Code 1872, Sec. 346; Deering's Code, ib.; Kerr's Code, ib.

Actions to Recover Stock Sold.

Sec. 2766. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity, in the assessment, irregularity or defect in the notice of sale or in its publication, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid or may be due thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced within six months after such sale was made.

Historical: Rev. St. 1887, Sec. 2630.
California Legislation: Similar: Civ.
Code 1872, Sec. 347; Deering's Code, ib.; Kerr's Code, ib.

Cited: Corcoran v. Sonora etc. Co.
(1902) 8 Ida. 651; 71 Pac. 127.

Proof of Publication.

Sec. 2767. The publication of notice required by this title may be proved by the affidavit of the printer, publisher, foreman or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. Such affidavit must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates of files and records of the corporation in his office, signed by the secretary, and under the seal of the corporation, are *prima facie* evidence of their contents.

Historical: Rev. St. 1887, Sec. 2631.
California Legislation: Similar: Civ.

Code 1872, Sec. 348; as amended:
 Deering's Code, ib.; Kerr's Code, ib.

Collection of Assessment by Action.

Sec. 2768. On the day specified for declaring the stock delinquent, or at any time subsequent thereto, and before the sale, the board of directors may elect to waive further proceedings by sale, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Historical: Rev. St. 1887, Sec. 2632.
California Legislation: Similar: Civ.

Code 1872, Sec. 349; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 7.**POWERS OF CORPORATIONS.****Section**

- 2769. Enumeration of powers.
- 2770. Limitation on powers.
- 2771. Misnomer in written instruments.
- 2772. When to commence business:
Attack on organization.

Section

- 2773. Increasing and diminishing capital stock.
- 2774. Limitation on acquisition of real property.

Enumeration of Powers.

Sec. 2769. Every corporation, as such, has power:

First. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually;

Second. To sue and be sued, in any court, as a natural person may;

Third. To make and use a common seal, and alter the same at pleasure;

Fourth. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited by this title;

Fifth. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

Sixth. To make by-laws not inconsistent with any existing law, for the management of its business and property, the regulation of its affairs, and for the transfer of its stock;

Seventh. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

Eighth. To enter into any contracts or obligations essential, necessary or proper to the transaction of its ordinary affairs, or for the purposes of the corporation.

Historical: Rev. St. 1887, Sec. 2633. Sec. 1 Ter. Ses. (1864) 543, Sec. 4.

California Legislation: Similar: Civ. Code 1872, Sec. 354; Deering's Code, ib.; Kerr's Code, ib.

Venue of Actions: A domestic cor-

poration has the same right as a resident defendant to have a trial in the county where its principal place of business is located. *Easley v. New Zealand Ins. Co.* (1894) 4 Ida. 205; 38 Pac. 405.

Limitation on Powers.

Sec. 2770. No corporation shall emit paper money or create or issue bills, notes or other evidences of debt, upon loans or otherwise, for circulation as money.

Historical: Rev. St. 1887, Sec. 2634. 1 Ter. Ses. (1864) 543, Sec. 15.

California Legislation: Same except

"emit paper money or" omitted: Civ. Code 1872, Sec. 356; Deering's Code, ib.; Kerr's Code, ib.

Misnomer in Written Instruments.

Sec. 2771. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

Historical: Rev. St. 1887, Sec. 2635.

California Legislation: Same: Civ.

Code 1872, Sec. 357; Deering's Code, ib.; Kerr's Code, ib.

When to Commence Business: Attack on Organization.

Sec. 2772. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this title, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the people of the State, on the information of the prosecuting attorney of the county of the principal place of business of the corporation.

Historical: Rev. St. 1887, Sec. 2636.

California Legislation: Similar: Civ. Code 1872, Sec. 358; Deering's Code, ib.; as amended: Kerr's Code, ib.

Cited: *Postal Tel. Cable Co. v. Oregon Short Line Ry. Co.* (1900) 104 Fed. Rep. 623.

Increasing and Diminishing Capital Stock.

Sec. 2773. Every corporation may increase or diminish its capital stock as in this section provided:

First. By a majority vote of the directors there may be called a meeting of the stockholders, to be convened for the purpose of increasing or diminishing the capital stock;

Second. Personal notice of the time and place of such meeting, and of the object thereof, must be served on each stockholder at least thirty days prior to the date of such proposed meeting, or, in lieu thereof, the notice must be published at least once a week in a news-

paper published in the county where the principal business is located, for at least thirty days;

Third. The notice must also contain the amount to which it is proposed to increase or diminish the capital stock;

Fourth. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works it may be the object or purpose of the corporation to construct.

Fifth. At least two-thirds of the entire capital stock must vote in favor of such increase or diminution before the same is effected;

Sixth. A certificate signed and verified by the chairman and secretary of the meeting, must be made, showing a strict compliance with all the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished;

Seventh. Said certificate must be subscribed by a majority of the directors, and duplicates made, one to be filed in the office of the county recorder and one in the office of the Secretary of State, as provided for original articles of incorporation, and thereupon the capital stock is so increased or diminished.

Historical: Rev. St. 1887, Sec. 2637. (See 1 Ter. Ses. (1864) 543, Secs. 20, 21 and 22); amended Laws 1907, 540, Sec. 3.

California Legislation: Similar: Civ. Code 1872, Sec. 359; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cross Reference: Fictitious increase of stock prohibited and no increase shall be made without consent of persons holding majority of stock obtained at a meeting held after thirty days' notice given in pursuance of law: Const. Art. 11, Sec. 9.

Limitation on Acquisition of Real Property.

Sec. 2774. No corporation must acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except such right of way or other property as it may acquire under the laws of Congress, or as may be otherwise specially provided. A corporation may acquire real property, as provided in the Code of Civil Procedure, when needed for any of the uses and purposes there mentioned.

Historical: Rev. St. 1887, Sec. 2638.

California Legislation: See Civ. Code 1872, Sec. 360; similar as amended: Deering's code ib.; as further amended: Kerr's Code, ib.

Cross Reference: Condemnation of property: Secs. 5210-5229.

ARTICLE 8.

CORPORATE RECORDS.

Section

2775. Records required to be kept.

Section

2776. Same: Stock and transfer book.

Records Required to Be Kept.

Sec. 2775. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, their object,

how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent, and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full—all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

Historical: Rev. St. 1887, Sec. 2639.

California Legislation: Same: Civ. Code 1872, Sec. 377; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Refusal to permit inspection a misdemeanor: Sec. 7122.

Cited: Mapleton Bank v. Standrod (1902) 8 Ida. 740; 71 Pac. 119.

Parol Evidence Prohibited: A corporation cannot prove by parol evidence facts which are required by this section to be shown in its journal. *Corcoran v. Sonora etc. Co.* (1902) 8 Ida. 651; 71 Pac. 127.

Same: Stock and Transfer Book.

Sec. 2776. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

Historical: Rev. St. 1887, Sec. 2640.

California Legislation: Same: Civ. Code 1872, Sec. 378; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Refusal to permit inspection a misdemeanor: Sec. 7122.

Right to Inspection: The stock and

transfer book is not subject to the inspection of private creditors of stockholders or the public generally, but by "any stockholder, member or creditor (of the corporation)". *Mapleton Bank v. Standrod* (1902) 8 Ida. 740; 71 Pac. 119.

ARTICLE 9.

RIGHT OF REPEAL.

Section

2777. Legislature may amend or repeal title.

Legislature May Amend or Repeal Title.

Sec. 2777. The Legislature may at any time amend or repeal this title or any chapter, article or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

Historical: Rev. St. 1887, Sec. 2641.
California Legislation: Same except
 "this part or" inserted before "this ti-

tle"; Civ. Code 1872, Sec. 384; Deering's Code, ib.; Kerr's Code, ib.

ARTICLE 10.

SALE OF FRANCHISE ON EXECUTION.

Section

2778. Franchise may be levied upon.
 2779. Purchaser to conduct business.
 2780. Actions by purchaser.

Section

2781. Effect of sale on corporation.
 2782. Redemption from sale.
 2783. Place of sale.

Franchise May Be Levied Upon.

Sec. 2778. For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise and all the rights and privileges thereof, may be levied upon and sold under execution in the same manner and with like effect as any other property.

Historical: Rev. St. 1887, Sec. 2642.

California Legislation: Same except
 "organize for profit" for "authorized
 to receive tolls", line 2: Civ. Code

1872, Sec. 388; same as amended:
 Deering's Code, ib.; similar as further
 amended: Kerr's Code, ib.

Purchaser to Conduct Business.

Sec. 2779. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

Historical: Rev. St. 1887, Sec. 2643.

California Legislation: Same: Civ.

Code 1872, Sec. 389; Deering's Code,
 ib.; Kerr's Code, ib.

Actions by Purchaser.

Sec. 2780. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages, or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had, is a bar to any subsequent action by or on behalf of the corporation for the same.

Historical: Rev. St. 1887, Sec. 2644.

California Legislation: Same: Civ.

Code 1872, Sec. 390; Deering's Code,
 ib.; Kerr's Code, ib.

Effect of Sale on Corporation.

Sec. 2781. The corporation whose franchise is sold, as in this title provided, in all other respects retains the same powers, is bound to discharge the same duties, and is liable to the same penalties and forfeitures as before such sale.

Historical: Rev. St. 1887, Sec. 2645.

California Legislation: Same except
 "article" for "title", line 2: Civ. Code

1872, Sec. 391; Deering's Code, ib.;
 similar as amended: Kerr's Code, ib.

Redemption From Sale.

Sec. 2782. The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender, the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

Historical: Rev. St. 1887, Sec. 2646.

California Legislation: Same: Civ. Code 1872, Sec. 392; Deering's Code,

ib.; different as amended: Kerr's Code, ib.

Place of Sale.

Sec. 2783. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business.

Historical: Rev. St. 1887, Sec. 2647.

California Legislation: Similar: Civ. Code 1872, Sec. 393; as amended:

Deering's Code, ib.; further amended: Kerr's Code, ib.

ARTICLE 11.**ANNUAL STATEMENT AND LICENSE FEE.****Section**

2784. Annual statement of corporations.

2785. Annual license fee.

Section

2786. Payment of license fee: Penalties.

Annual Statement of Corporations.

Sec. 2784. Every corporation organized or formed under, by or pursuant to the laws of this State, whether now existing or hereafter created, and every foreign corporation, joint stock company or association now doing business in this State, or that may hereafter do business in this State, except fire, marine, fire and marine, life, accident, life and accident, surety companies and mining corporations owning mines which are not productive, being worked or operated, shall, during the month of June of each year, and on or before the first day of July of each year, furnish to the Secretary of State, upon blanks to be supplied by him, a correct statement, sworn to by one of the officers of the corporation, or managing agent or authorized attorney in fact in this State of any foreign corporation, joint stock company or association, before an officer duly authorized to administer oaths, setting forth the name of the corporation, joint stock company or association; the location of its principal office, the names of the president, secretary and treasurer with the postoffice address of each, date of annual election of directors and officers of such corporation, joint stock company or association, the amount of authorized capital stock, the number of shares, the par value of each share, the amount of capital stock subscribed, the amount of capital stock issued and the amount of capital stock paid up. Every foreign corporation, joint stock company or association shall include in such statement the names and postoffice addresses of its managing agent and attorneys in fact in this State.

Historical: Laws 1907, 235, Sec. 1.

Annual License Fee.

Sec. 2785. Every such corporation, joint stock company or association, foreign as well as domestic, shall pay an annual license fee in proportion to the amount of its authorized capital stock as follows, to-wit:

1. If such capital stock shall not exceed five thousand dollars, an annual license fee of ten dollars.

2. If such capital stock shall exceed five thousand dollars, and shall not exceed ten thousand dollars, an annual license fee of twelve dollars and fifty cents.

3. If such capital stock shall exceed ten thousand dollars, and shall not exceed twenty-five thousand dollars, an annual license fee of fifteen dollars.

4. If such capital stock shall exceed twenty-five thousand dollars, and shall not exceed fifty thousand dollars, an annual license fee of twenty-two dollars and fifty cents.

5. If such capital stock shall exceed fifty thousand dollars, and shall not exceed one hundred thousand dollars, an annual license fee of thirty-seven dollars and fifty cents.

6. If such capital stock shall exceed one hundred thousand dollars, and shall not exceed two hundred and fifty thousand dollars, an annual license fee of fifty-two dollars and fifty cents.

7. If such capital stock shall exceed two hundred and fifty thousand dollars, and shall not exceed five hundred thousand dollars, an annual license fee of seventy-five dollars.

8. If such capital stock shall exceed five hundred thousand dollars, and shall not exceed one million dollars, an annual license fee of ninety dollars.

9. If such capital stock shall exceed one million dollars, and shall not exceed two million dollars, an annual license fee of one hundred thirty dollars.

10. If such capital stock shall exceed two million dollars, an annual license fee of one hundred fifty dollars.

The amount of the capital stock of every corporation, joint stock company or association, shall be determined by its articles of incorporation, or amendments or supplementary articles of incorporation, charter, declaration, report or statement filed with the Secretary of State as in this article provided: *Provided*, That this section shall not apply to any foreign corporation formed or organized for any educational, literary, scientific, religious or charitable purpose.

Historical: Laws 1907, 235, Sec. 2.

Cross Reference: Water users' associations exempt from annual fran-

chise tax: Sec. 2842. License fees of surety companies: Sec. 2942.

Payment of License Fee: Penalties.

Sec. 2786. On or before the fifteenth day of July of each year, the Secretary of State shall file with the State Treasurer a statement showing the amount of the license fee due as ascertained in the foregoing manner from the different corporations hereinbefore referred to. Within thirty days thereafter every such corporation shall pay or cause to be paid to the State Treasurer the license fee hereinbefore mentioned. Any such corporation failing or refusing to render such statement, or to amend the same when required to do so by the

Secretary of State in case the same shall be incomplete, irregular or unsatisfactory, or to pay such license fee, for more than twenty days after the time specified, or any corporation, joint stock company or association doing business in this State contrary to this article, shall be liable to a fine of one hundred dollars to be recovered together with any license fee due, by an action at law in the name of the State, to be instituted by any prosecuting attorney at the request of the Secretary of State. The annual license fee required by this section shall be paid in advance for the fiscal year beginning July first of each year, and in case new corporations are formed or enter the State during the fiscal year, the first year's fee shall be proportionate to such fraction of a year.

Historical: Laws 1907, 235, Sec. 3.

ARTICLE 12.

MISCELLANEOUS PROVISIONS.

Section

2787. Directors are trustees on dissolution.

2788. Extending term of existence.

2789. Continuation of existing corporations.

Section

2790. Same.

2791. Application of chapter.

Directors Are Trustees on Dissolution.

Sec. 2787. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution, are trustees of the creditors and stockholders, or members, of the corporation dissolved, and have full power to settle the affairs of the corporation.

Historical: Rev. St. 1887, Sec. 2648.
See 1 Ter. Ses. (1864) 543, Sec. 23.
California Legislation: Same: Civ.

Code 1872, Sec. 400; Deering's Code, ib. Similar as amended: Kerr's Code, ib.

Extending Term of Existence.

Sec. 2788. Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting of a majority of the directors and be filed in the office of the county recorder, where the original articles of incorporation were filed, and a certified copy thereof in the office of the Secretary of State, and thereupon the term of the corporation shall be extended for the specified period.

Historical: Rev. St. 1887, Sec. 2649.
California Legislation: See Civ. Code 1872, Sec. 401; similar as

amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Continuation of Existing Corporations.

Sec. 2789. Any existing corporation formed under any law of

this State may continue under this chapter, or under the provisions of any subsequent chapter particularly applicable thereto, by the unanimous vote of all its directors, or its election so to continue may be made at any annual meeting of the stockholders, or members or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the recorder of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the Secretary of State, and thereafter the corporation must continue its existence under the provisions of this title, which are applicable thereto; and, must possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

Historical: Rev. St. 1887, Sec. 2650. This provision of the Revised Statutes has been left unchanged, although it applies only to corporations organized prior to the taking effect of the Revised Statutes. This chapter having been in force continuously since that date, all corporations formed since then come within its provisions.

California Legislation: Different: Civ. Code 1872, Sec. 402; repealed 1874.

Estoppel to Assert Non-Compli-

ance: Where a corporation organized prior to the passage of the Revised Statutes, commenced levying assessments immediately after such passage, and continued so to do for a period of eight years, with the acquiescence of its stockholders, a stockholder could not defeat an assessment levied by the corporation after the lapse of such a time, on the ground that it had not complied with this section. *Hall v. Eagle Rock etc. Co.* (1897) 5 Ida. 551; 51 Pac. 110.

Same.

Sec. 2790. No corporation formed or existing before twelve o'clock noon, of June 1, 1887, is affected by the provisions of this title unless such corporation elects to continue its existence under it as provided in the last section, but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed subject to the provisions of this section.

Historical: Rev. St. 1887, Sec. 2651. "June 1, 1887" inserted for "the day upon which this title takes effect".

The Revised Statutes took effect on June 1, 1887.

Application of Chapter.

Sec. 2791. The provisions of this chapter are applicable to every corporation, unless such corporation is exempted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this chapter, in which case the special provision prevails.

Historical: Rev. St. 1887, Sec. 2652.

California Legislation: Same except "title" for "chapter", lines 1 and 4, and "excepted" for "exempted", line

2: Civ. Code 1872, Sec. 403; Deering's Code, ib.; Kerr's Code, Sec. 403(a).

ARTICLE 13.
FOREIGN CORPORATIONS.

Section

2792. Filing of articles and designation of agent.

Filing of Articles and Designation of Agent.

Sec. 2792. Every corporation not created under the laws of this State must, before doing business in this State, file with the county recorder of the county in this State in which is designated its principal place of business in this State, a copy of the articles of incorporation of said corporation, duly certified to by the Secretary of State of the State in which said corporation was organized, and a copy of such articles of incorporation duly certified by such county recorder, with the Secretary of State, paying to the latter the same fees as are provided by law to be paid for filing original articles of incorporation. Such corporation must also within three months from the time of commencement to do business in this State, designate some person in the county in which the principal place of business of such corporation in the State is conducted, upon whom process issued by authority of or under any law of this State may be served, and within the time aforesaid must file such designation in the office of the Secretary of State, and in the office of the clerk of the District Court for such county, and a copy of such designation certified by either of said officers, must be evidence of such appointment. It is lawful to serve on such person so designated any process issued as aforesaid, and such service must be deemed a valid service thereof. Such notice and designation of agent on whom process may be served, shall run from the time of filing the same as herein provided, until his successor is appointed by such filing, or said office becomes vacant by resignation filed by such agent in the office in which his appointment is filed, or by his death, or removal from such county, and in case of such vacancy said corporation shall, within sixty days thereafter, refill said office as herein provided.

No contract or agreement made in the name of, or for the use or benefit of, such corporation prior to the making of such filings as first herein provided, can be sued upon or enforced in any court of this State by such corporation. Such corporation cannot take or hold title to any realty within this State prior to making such filings, and any pretended deed or conveyance of real estate to such corporation prior to such filings shall be absolutely null and void. Any and all officers, agents and representatives of said corporation, or persons claiming to be officers or agents of the same, who shall make or attempt to make any contract or agreement, or contract any indebtedness, in the name of such corporation, or for its use and benefit, before such original filings are made, or while such corporation is in default upon filing a reappointment as hereby provided, shall be, jointly and severally, personally liable upon and for all such contracts and agreements as principal contractors.

Every such corporation which fails to comply with the provisions of this section shall be denied the benefit of the statutes of the State limiting the time for the commencement of civil actions, and any limitations in such statutes shall only run in favor of any such cor-

poration during such time as such person duly designated, as aforesaid, upon whom such service can be made, shall be within the State: *Provided*, That foreign corporations complying with the provisions of this section shall have all the rights and privileges of like domestic corporations, including the right to exercise the right of eminent domain, and shall be subject to the laws of the State applicable to like domestic corporations.

Historical: Rev. St. 1887, Sec. 2653. (See 10 Ter. Ses. (1879) 3, Sec. 5); amended Laws 1903, 49, Sec. 1. Omitting "and every such corporation now doing business within this State must within three months after the taking effect of this act", as now obsolete.

California Legislation: See Civ. Code 1872, Sec. 403, note, Sec. 1; Deering's Code, *ib.*; repealed 1905.

Cross Reference: Foreign corporations not to do business within the State without having one or more known places of business and an authorized agent on whom process may be served: Const. Art. 11, Sec. 10. Appointment of agent for service of process by insurance companies: Sec. 2883. Foreign assessment life insurance companies to designate Insurance Commissioner as agent for service of process: Sec. 2886. Foreign fraternal life insurance companies to make like designation. Sec. Sec. 2893. Designation of agent by surety companies: Sec. 2939.

Application: A foreign corporation that manufactures farm machinery in another State and sells the same to citizens of this State on orders taken by a foreign agent, subject to its approval, and ships machinery into the State to the purchaser, is engaged in interstate commerce and need not comply with the provisions of this section. *Belle City Manufacturing Co. v. Frizzell* (1905) 11 Ida. 1; 81 Pac. 58.

Effect of Non-Compliance: A foreign corporation which fails to comply with the requirements of this section, cannot maintain a suit in any of the courts of the State for breach or violation of a contract entered into during the time the corporation has failed to comply therewith. *Katz v. Herrick* (1906) 12 Ida. 1; 86 Pac. 873.

The fact that this statute points out certain penalties against non-complying foreign corporations but does not

specifically declare contracts entered into in violation of the statute to be void, does not indicate that the contracts of non-complying foreign corporations are to be deemed valid. *Ib.*

Venue of Actions: By complying with this section and designating an agent for the service of process, a foreign corporation obtains the same rights as a citizen so far as the venue of an action against it is concerned, but no superior rights, and it may therefore be sued in a justice's court of the precinct in which an injury to property committed by it occurs, although the residence of the agent whom it designates is in another county. *Webster v. Oregon Short Line Ry.* (1898) 6 Ida. 312; 55 Pac. 661.

A foreign corporation which complies with the requirements of the statute is entitled to a trial within the county where its principal place of business is located, the same as is a domestic corporation. (Overruled, *post.*) *Easley v. New Zealand Ins. Co.* (1894) 4 Ida. 205; 38 Pac. 405.

Foreign corporations doing business in this State do not acquire, by complying with this section and designating an agent for service of process, a fixed residence in this State so as to be entitled to be sued in the county in which such agent resides, but such corporations are, for the purpose of jurisdiction, non-residents of the State and may be sued in the District Court in any county designated in the complaint. (*Easley v. Ins. Co.* 4 Ida. 205; 38 Pac. 405; overruled). *Boyer v. No. Pac. Ry.* (1901) 8 Ida. 74; 66 Pac. 826.

Proof of Service: Proof of service of summons on a foreign corporation by delivery of a copy to the president, without showing any designation by the corporation of the president as its agent for the service of process, is fatally defective. *Applington v. G. V. B. Mining Co.* (1898) 6 Ida. 216; 55 Pac. 241.

CHAPTER 2.

RAILROAD CORPORATIONS.

Article

1. General provisions and powers of railroads.
2. Construction of road.

Article

3. Operation of road.
4. Conditional sales and leases of equipment.

ARTICLE 1.

GENERAL PROVISIONS AND POWERS OF RAILROADS.

Section

2793. Election of directors.
 2794. Issuance of bonds.
 2795. Same: Sinking fund: Conversion into stock.
 2796. Enumeration of powers.
 2797. Purchase, sale and guaranty of securities.

Section

2798. Bridging navigable streams.
 2799. Construction of extensions and branches.
 2800. Consolidation, sales and leases.
 2801. Extensions into the State.
 2802. Application and construction of preceding sections.

Note: Railroad transportation and express companies are common carriers, and all railroads are public highways, and subject to legislative control: Const. Art. 11, Sec. 5. Equal rights guaranteed and discrimination prohibited: Const. Art. 11, Sec. 6.

Election of Directors.

Sec. 2793. Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in Chapter 1 of this title.

Historical: Rev. St. 1887, Sec. 2663.

California Legislation: Same except "in Article 2, Chapter 1, Title 1 of this

part" for "in Chapter 1 of this title", last line: Civ. Code 1872, Sec. 454; Deering's Code, ib.; Kerr's Code, ib.

Issuance of Bonds.

Sec. 2794. Railroad corporations may borrow, on the credit of the corporation, and under such regulations and restrictions as the directors thereof may impose, such sums of money as may be necessary for constructing and completing their railroad, and may issue and dispose of bonds or promissory notes therefor, in denominations of not less than five hundred dollars, and at a rate of interest not exceeding ten per cent per annum, and may also issue bonds or promissory notes, of the same denomination and rate of interest, in payment of any debts or contracts for constructing and completing their road, with its equipments and all else relative thereto. The amount of bonds or promissory notes issued for such purposes must not exceed, in all, the amount of their capital stock; and to secure the payment of such bonds or notes, they may mortgage their corporate property and franchise.

Historical: Rev. St. 1887, Sec. 2664.

California Legislation: Same except "by unanimous concurrence", inserted after "thereof", line 3: Civ. Code

1872, Sec. 456; similar as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Same: Sinking Fund: Conversion Into Stock.

Sec. 2795. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing therein into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

Historical: Rev. St. 1887, Sec. 2665.
California Legislation: Same except
"so" inserted before "issued", line 3:

Civ. Code 1872, Sec. 457; Deering's
Code, ib.; Kerr's Code, ib.

Enumeration of Powers.

Sec. 2796. Every railroad corporation has power:

First. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employees may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto;

Second. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

Third. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

Fourth. To lay out its road, not exceeding nine rods wide, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same: *Provided*, That any such railroad corporation may take and hold any right of way or other property, of whatever width or extent that it may acquire under the laws of Congress;

Fifth. To construct its road across, along or upon any stream of water, water course, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation must restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

Sixth. To cross, intersect, join or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, must unite with the owners of such new railroad in forming such new intersections and connections, and grant facilities therefor. And if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections and connections, the same must be ascertained and determined as is provided in the Code of Civil Procedure;

Seventh. To purchase lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its road,

and all necessary appendages and adjuncts, or acquire them in the manner provided in the Code of Civil Procedure for the condemnation of lands; and to change the line of its road in whole or in part whenever a majority of the directors so determine, as is provided hereinafter, but no such change must vary the general route of such road as contemplated in its articles of incorporation;

Eighth. To carry persons and property on their railroad and receive tolls or compensation therefor;

Ninth. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business;

Tenth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change or amendment by the Legislature at any time;

Eleventh. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

Historical: Rev. St. 1887, Sec. 2666.

California Legislation: Similar: Civ. Code 1872, Sec. 465; Deering's Code, ib.; additional provision as amended: Kerr's Code, ib.

Cross Reference: Condemnation proceedings: Secs. 5210-5229.

Purchase, Sale and Guaranty of Securities.

Sec. 2797. Any railroad corporation, whether chartered by, or organized under, the laws of this State or of the Territory of Idaho, or of the United States, or of any other State or Territory, may take, purchase, hold, sell, and dispose of, or guarantee the payment of, the bonds and securities of any other railroad corporation whose line of railroad is continuous of, or by lease, traffic contract, or otherwise connected with, its own line.

Historical: Laws 1890-91, 16. Sec. 1;
re-enacted Laws 1899, 10, Sec. 1.

Bridging Navigable Streams.

Sec. 2798. Any railroad corporation heretofore duly organized and incorporated under the laws of this State, or of the United States, or of any other State or Territory, or which may hereafter be duly incorporated and organized under the laws of this State, or of the United States, or of any other State or Territory, and authorized to do business in this State and to construct and operate railroads therein, shall have, and hereby is given, the right to build and construct, possess and own, bridges across the navigable streams and waters within this State, over or across which the projected line or lines of railway of such railroad corporation, or either of them, will run: *Provided*, That said bridges are to be constructed in good faith for the purpose of being made a part of the constructed line of said railroad, or a part of any of the line thereof to be constructed and in course of construction, and to be used by such railroad corporation as a part of its line of railroad so constructed, or to be constructed,

for the more convenient, expeditious and safe operation thereof: *And provided further*, That such bridges shall be so constructed as to not interfere with, impede or obstruct the navigation of such stream or navigable waters, and shall comply with, and be subject to, the Acts of Congress relating to navigable streams, and the rules and regulations of the executive departments.

Historical: Laws 1899, 20, Sec. 1;
re-enacting Laws 1890-91, 32, Sec. 1.

Construction of Extensions and Branches.

Sec. 2799. Any railroad corporation chartered by or organized under the laws of this State, or of any State or Territory, or under the laws of the United States, and authorized to do business in this State, may extend its railroad from any point named in its charter or articles of incorporation, or may build branch roads, either from any point on its line of road or from any point on the line of any other railroad connecting, or to be connected, with its road, the use of which other road between such points and the connection with its own road, such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making any such extension, or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which said railroad is to be constructed, and the estimated length of such railroad, and the name of each county in this State through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of State, who shall indorse thereon the date of filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch, and receive aid thereto, which it would have had if it had been authorized in its charter or articles of incorporation.

Historical: Laws 1899, 81, Sec. 1;
re-enacting Laws 1890-91, 124, Sec. 1.

Consolidation, Sales and Leases.

Sec. 2800. Any such railroad corporation may consolidate its stock, franchises and property with any other railroad corporation, whether within or without the State, when such other railroad corporation does not own any competing line of railroad, upon such terms as may be agreed upon, and become one corporation, by any name selected, which, within this State, shall possess all of the powers, franchises, and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions such as such corporations peculiarly possess, or were subject to at the time of consolidation by the laws then in force applicable to them or either of them. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at the regular annual meeting thereof, or a special meeting called for that purpose in the manner provided by the by-laws of the respective consolidating corporations, or by the consent, in writing,

of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or such consent, and accompanied by lists of their stockholders and the numbers of shares held by each, duly certified by the respective presidents and secretaries, with the respective corporate seals of such corporations affixed, shall be filed for record in the office of the Secretary of State before any such consolidation shall have any validity or effect.

Any railroad corporation whose line is wholly or in part within this State, whether chartered by or organized under the laws of this State, or of any other State or Territory, or of the United States, may lease or purchase and operate the whole or any part of the railroad or any other railroad corporation, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto; (or any railroad company may sell or lease the whole or any part of its railroads or branches within or without this State, constructed, or to be constructed, together with all property and rights, privileges and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States or of this State, or of any other state or Territory of the United States); and all such purchases or leases heretofore made or entered into are for all intents and purposes hereby ratified and confirmed: *Provided*, That in no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated, at the par value thereof, nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation.

Historical: Laws 1890-91, 124, Sec. 2; re-enacted Laws 1899, 81, Sec. 2; amended Laws 1901, 214, Sec. 1.

Cross Reference: Domestic rail-

road or other corporations consolidating with foreign corporations do not thereby become foreign corporations: Const. Art. 11, Sec. 14.

Extensions Into the State.

Sec. 2801. Any railroad corporation chartered by or organized under the laws of the United States, or of any State or Territory, whose constructed railroad shall reach or intersect the boundary line of this State at any point, may extend its railroad into the State from any such point or points to any place or places within this State, and may build branches from any point on such extension. Before making such extension, or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this State through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of State, who shall indorse thereon the date of filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension, or build such branch, and receive such aid thereto as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this State. It shall be the duty of railroad companies, when intersecting or crossing any other rail-

road in this State, to so arrange their sidetracks or switches that cars or freight may be readily transferred from one track to the other at the option of the shipper.

Historical: Laws 1899, 81, Sec. 3; re-enacting Laws 1890-91, 124, Sec. 3.

Application and Construction of Preceding Sections.

Sec. 2802. The three preceding sections shall not apply to any corporations before such corporations shall have filed an acceptance of the provisions of the State Constitution, as provided in Section 7, of Article 11, of the Constitution, nor shall anything in said sections contained ever be so construed as to exempt any railroad property from taxation.

Historical: Laws 1899, 81, Secs. 4, 5; re-enacting Laws 1890-91, 124, Secs. 4, 5. Rewritten in combination.

ARTICLE 2.
CONSTRUCTION OF ROAD.

Section	Section
2803. Map and profile.	2807. Use of streets: Consent of authorities.
2804. Altering location.	2808. Crossing other railroads and highways.
2805. Time for commencing and completing construction.	
2806. Crossings and intersections.	

Map and Profile.

Sec. 2803. Every railroad corporation in this State must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the Secretary of State; and also like maps of the parts thereof located in different counties, and file the same in the office of the recorder of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

Historical: Rev. St. 1887, Sec. 2667.	Code 1872, Sec. 466; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same except "clerk" for "recorder", line 6: Civ.	

Altering Location.

Sec. 2804. If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, of Section 2796, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are on file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location within

five years after such change. No new location as herein provided, must be run so as to avoid any points named in their articles of incorporation.

Historical: Rev. St. 1887, Sec. 2668.
California Legislation: Similar: Civ.

Code 1872, Sec. 467; Deering's Code, ib.; Kerr's Code, ib.

Time for Commencing and Completing Construction.

Sec. 2805. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited.

Historical: Rev. St. 1887, Sec. 2669.
California Legislation: Same: Civ.
Code 1872, Sec. 468; Deering's Code,

ib.; additional provisions as amended:
Kerr's Code, ib.

Crossings and Intersections.

Sec. 2806. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under the Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases.

Historical: Rev. St. 1887, Sec. 2670.
California Legislation: Same except "Title 7, Part 3" before "Code of Civil Procedure"; Civ. Code 1872, Sec. 469; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Condemnation proceedings: Secs. 5210-5229.

Use of Streets: Consent of Authorities.

Sec. 2807. No railroad corporation must use any street, alley, or highway, or any of the land or water within any incorporated city or town, unless the right to so use the same is granted by a two-thirds vote of the town or city authority from which the right must emanate.

Historical: Rev. St. 1887, Sec. 2671.
California Legislation: Same: Civ.
Code 1872, Sec. 470; Deering's Code, ib.; Kerr's Code, ib.

be constructed within municipal corporations without the consent of the local authorities: Const. Art. 11, Sec. 11.

Cross Reference: Railroads not to

Crossing Other Railroads and Highways.

Sec. 2808. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional

lands and materials as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in the Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation.

Historical: Rev. St. 1887, Sec. 2672.

California Legislation: Same except "material" for "materials", line 6, and "Title 7, Part 3" for "the" before "Code", line 9: Civ. Code 1872, Sec.

472; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Condemnation proceedings: Secs. 5210-5229. Intersections at railroad crossings: Sec. 2801.

ARTICLE 3.

OPERATION OF ROAD.

Section

- 2809. Checking baggage.
- 2810. Accommodations for passengers and freight.
- 2811. Refusal to accept passengers or freight.
- 2812. Accommodations to be sufficient.
- 2813. Printed rules and regulations.
- 2814. Erection and maintenance of fences.
- 2815. Same: Liability for damages.
- 2816. Crossings and cattle guards.
- 2817. Claim for damages.

Section

- 2818. Recovery of attorney's fees.
- 2819. Book of descriptions of stock killed.
- 2820. Disposal of carcass.
- 2821. Bell or whistle to be sounded.
- 2822. Ejection of passengers.
- 2823. Report of delayed trains.
- 2824. Same: Notice at stations.
- 2825. Same: Failure to give notice a misdemeanor.
- 2826. Same: Punishment of corporation.

Checking Baggage.

Sec. 2809. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employe of a railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employe of the railroad corporation, he may recover the value thereof from the corporation.

Historical: Rev. St. 1887, Sec. 2674.

California Legislation: Same: Civ.

Code 1872, Sec. 479; Deering's Code, ib.; Kerr's Code, ib.

Accommodations for Passengers and Freight.

Sec. 2810. Every such corporation must start and run their cars for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation at the place of starting, at the junction of other railroads and at siding and stopping places established for receiving and discharging way passengers and freight; and must take, transport and discharge such passengers and property at, from and to such places, on the due payment of toll, freight or fare therefor.

Historical: Rev. St. 1887, Sec. 2675.

California Legislation: Same: Civ. Code 1872, Sec. 481; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Cross Reference: Equal transportation rights guaranteed and discriminations prohibited: Const. Art. 11, Sec. 5.

Refusal to Accept Passengers or Freight.

Sec. 2811. In case of refusal by such corporation or its agents so to take and transport any passengers or property, or to deliver the same at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

Historical: Rev. St. 1887, Sec. 2676.

California Legislation: Same: Civ.

Code 1872, Sec. 482; Deering's Code, ib.; Kerr's Code, ib.

Accommodations to be Sufficient.

Sec. 2812. Every railroad corporation must furnish on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

Historical: Rev. St. 1887, Sec. 2677.

California Legislation: Same: Civ.

Code 1872, Sec. 483; Deering's Code, ib.; Kerr's Code, ib.

Printed Rules and Regulations.

Sec. 2813. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

Historical: Rev. St. 1887, Sec. 2678.

California Legislation: Same: Civ.

Code 1872, Sec. 484; Deering's Code, ib.; Kerr's Code, ib.

Erection and Maintenance of Fences.

Sec. 2814. Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track or property, whenever the line of their road at any time passes through or along, or abuts upon, or is contiguous to, private property, or enclosed land in the actual possession of another. Railroad corporations paying to the owner of the land through or along which their road is located, an agreed price, for making and maintaining such fence, or paying the cost of such fence with the award of damages allowed for the right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damages or loss which

may accrue to such corporation from such animals being upon their railroad track, resulting from the non-construction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employees.

Historical: Rev. St. 1887, Sec. 2679. There is some little doubt as to whether or not this section was intended to be repealed by the following section. In view of the peculiar language of the repealing clause of the act from which the following section is taken (See Laws 1907, 324, Sec. 5), and the fact that there does not seem to be any irreconcilable conflict between the sections, it was thought best to preserve this section, and leave to the Legislature the duty of repealing it specifically, if such is its intent.

California Legislation: Similar: Civ. Code 1872, Sec. 486; Deering's Code, ib.; Kerr's Code, ib.

Object of Section: This statute is a general police regulation, designed not merely for the benefit of the adjoining owners, but for the protection of property in domestic animals generally and for the safety of passengers who would be exposed to peril by

collision with cattle coming upon the track. The company is under a general obligation to the public and not a limited obligation to adjoining land owners, and, when in default for not complying with the provisions of this statute, it is liable for injuries to cattle unlawfully upon the adjoining lands and coming therefrom upon its tracks. *Johnson v. Oregon Short Line Ry. Co.* (1900) 7 Ida. 355; 63 Pac. 112.

Duty to Fence: Railroads must make and maintain good and sufficient fences on both sides of their tracks where they pass through private land, whether the owner has fenced his land or not. *Patrie v. O. S. L. Ry.* (1899) 6 Ida. 448; 56 Pac. 82. The words, "private property", include a homestead entry and the road must be fenced when it passes along lands occupied under such an entry. *Johnson v. O. S. L. Ry.* (1900) 7 Ida. 355; 63 Pac. 112.

Same: Liability for Damages.

Sec. 2815. Every railroad company operating any steam or electric railroad in this State, shall erect and maintain lawful fences not less than four feet high on each side of its road, where the same passes through, along or adjoining enclosed or cultivated fields or enclosed lands, with proper and necessary openings and gates therein, and farm crossings; and also construct and maintain cattle guards at all highway crossings where fences are required as aforesaid, suitable and sufficient to prevent horses, cattle, mules or other animals from getting on the railroad.

Until such fences, openings, gates, farm crossings and cattle guards shall be duly made and maintained, such corporation shall be liable to pay all damages which shall be done by its agents, engines or cars, to horses, cattle, mules or other animals on said road, or by reason of any horse, cattle, mule or other animals escaping from or coming upon said lands, fields or enclosures occasioned in either case by the failure to construct or maintain such fences or cattle guards, regardless of whether the persons operating or in charge of such engines or cars were negligent or not. But after such fences, gates, farm crossings and cattle guards shall be duly made and maintained, such corporation shall not be liable for any such damages unless negligently or wilfully done.

If any corporation aforesaid fail, neglect or refuse for and during the period of three months after the completion of its road through or along the fields or enclosures hereinbefore named, to erect and maintain any fence, opening gates, farm crossings or cattle guards as herein required, and after having received not less than thirty days' notice requiring them so to do, then the owner of such fields or enclosures may erect and maintain such fences, opening gates, farm crossings and cattle guards, and shall thereupon have a right

to sue and recover from such corporation in any court of competent jurisdiction, the full value of the same: *Provided*, That no recovery can be had on account of stock injured or killed which came upon said highway by reason of failure to keep such gates closed.

Historical: Laws 1907, 324, Sec. 1. See historical note to preceding section.

Constitutionality: The statute which this section repealed (Rev. St. Sec. 2680) was held unconstitutional because it made the railroad liable for

killing an animal without any proof of negligence or of violation of statutory duty. *Catril v. Union Pac. Ry. Co.* (1889) 2 Ida. 576; 21 Pac. 416; *Jones v. O. S. L. Ry.* (1899) 6 Ida. 441; 56 Pac. 76.

Crossings and Cattle Guards.

Sec. 2816. It shall be the duty of every railroad company whose line runs through or across any desert or other unoccupied territory, to keep and maintain suitable crossings and cattle guards, wherever any public highway or publicly traveled road crosses the same, and to place gates at convenient intervals not exceeding four miles apart, for the crossing of the same wherever there are no roads within such distances.

Historical: Laws 1907, 324, Sec. 2.

Claim for Damages.

Sec. 2817. Any person claiming damages under the two preceding sections must serve notice of their claim in writing and signed by such person, or by his authorized agent, upon the nearest station agent of such railroad company, within thirty days after the alleged damage is done, and all suits for such damages must be commenced, and summons served therein, within six months after service of such notice.

Historical: Laws 1907, 324, Sec. 3.

Recovery of Attorneys' Fees.

Sec. 2818. In all suits under the three preceding sections, if the plaintiff recover any damages, he shall also be entitled to recover reasonable attorneys' fees not exceeding ten per cent upon the amount recovered, together with his costs of suit.

Historical: Laws 1907, 324, Sec. 4.

Book of Descriptions of Stock Killed.

Sec. 2819. Every railroad company must keep a book at a principal station in each county into or through which its road runs, to be designated by the company, and a notice of the station so designated must be filed with the recorder of the county in which the station is located; and every such company must cause to be entered in said book, within fifteen days after the killing or maiming of any animal, a description as nearly as may be of such animal, its color, age, marks and brands, and keep said book subject to public inspection. Should any company fail to keep such book, or to file such notice in the manner herein provided, or to enter therein such description of any animal maimed or killed, for a period of fifteen days thereafter, such company is liable to the owner of such animal for twice the value thereof.

Historical: Rev. St. 1887, Sec. 2681.

Cited: Jones v. Oregon S. L. Ry.
(1899) 6 Ida. 441; 56 Pac. 76.

Disposal of Carcass.

Sec. 2820. In case of maiming or killing any cattle, sheep or hog, the body of the animal belongs to the company, unless the owner elects, within twelve hours, to take the same in satisfaction or reduction of damages. The company may proceed to take care of and preserve the body of such animal, and must, unless taken by the owner, take off enough of the hide to show distinctly any brands on such animal, also both ears, including the hide between the ears, and in such way as to keep the ears together and the pieces of hide so taken off, and the ears of each animal, must be attached together and preserved for at least three months for inspection at the station house nearest to the place where such killing or maiming occurred. For every failure so to keep any such pieces of hide and ears for inspection, the company, in addition to the damages to the owner, forfeits one hundred dollars, to be recovered in an action in the name of the State, in any court of competent jurisdiction, one-half to be paid into the school fund of the county, and the residue to the informer.

Historical: Rev. St. 1887, Sec. 2682;
amended act 15th Ter. Ses. (Laws
1888-89) 45.

Bell or Whistle to be Sounded.

Sec. 2821. A bell of at least twenty pounds weight must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the prosecuting attorney of the proper county, for the use of the State. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, trains, or cars, when the provisions of this section are not complied with.

Historical: Rev. St. 1887, Sec. 2683.
California Legislation: Same: Civ.

Code 1872, Sec. 486; Deering's Code,
ib.; Kerr's Code, ib.

Ejection of Passengers.

Sec. 2822. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

Historical: Rev. St. 1887, Sec. 2684.
California Legislation: Same: Civ.

Code 1872, Sec. 487; Deering's Code,
ib.; Kerr's Code, ib.

Report of Delayed Trains.

Sec. 2823. All railway corporations operating in the State of

Idaho shall, upon the arrival of delayed passenger trains at the first division terminal within the confines of this State, notify by telegraph every station on the line of the road within this State, how much the said passenger train is delayed. Upon the arrival of the said delayed passenger train at each succeeding division terminal, or station where train dispatchers are located, it shall be the duty of the dispatcher or telegraph operator at each terminal or office to notify every telegraph station on the line of the road, not yet reached by such train, how much the said train is delayed.

Historical: Laws 1907, 347, Sec. 1

Same: Notice at Stations.

Sec. 2824. Every operator, agent or person in charge of the telegraph station, shall post a notice in a conspicuous place in the station or waiting room, and when such telegraph station is connected by telephone with the central telephone exchange in any town or city, he shall promptly notify such central exchange how late the delayed train is running.

Historical: Laws 1907, 347, Sec. 2.

Same: Failure to Give Notice a Misdemeanor.

Sec. 2825. Every operator, dispatcher, agent, or person in charge of a telegraph station, who shall fail, neglect or refuse to post such notice correctly, or to advise such telephone exchange promptly, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not to exceed twenty-five dollars for each offense.

Historical: Laws 1907, 347, Sec. 3.

Same: Punishment of Corporation.

Sec. 2826. Any railway corporation that shall violate the provisions of the three preceding sections shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not to exceed one hundred dollars for each offense.

Historical: Laws 1907, 347, Sec. 4.

ARTICLE 4.
CONDITIONAL SALES AND LEASES OF EQUIPMENT.

Section	Section
2827. Lien of vendor or lessor.	2829. Prior contracts not affected.
2828. Same: Record of contract.	

Lien of Vendor or Lessor.

Sec. 2827. In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that

the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: *Provided*, That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless: (1) The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the Secretary of State; (3) each locomotive, engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner" or "lessor" or "bailor" as the case may be.

Historical: Laws 1905, 154, Sec. 1.

Same: Record of Contract.

Sec. 2828. The contracts herein authorized shall be recorded by the Secretary of State in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the Secretary of State shall be entitled to a fee of two dollars for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the record.

Historical: Laws 1905, 154, Sec. 2.

Prior Contracts Not Affected.

Sec. 2829. This article shall not be held to invalidate or affect in any way any contract of the kind referred to in the first section hereof, made prior to the third day of May, 1905, and any such contract theretofore made may, upon compliance with the provisions of this article, be recorded as herein provided.

Historical: Laws 1905, 154, Sec. 3.
"Made prior to the third day of May, 1905," inserted for "heretofore made".
The act contained no emergency

clause, and the eighth session of the Legislature adjourned March 4th, 1905, which would make the act effective May 3d, 1905.

CHAPTER 3.

BRIDGE, FERRY, FLUME AND BOOM CORPORATIONS.

Section

2830. License to take tolls.

2831. When franchise ceases.

Section

2832. Application to individuals.

License to Take Tolls.

Sec. 2830. When a corporation is formed for the construction and maintenance of a bridge, ferry, flume or boom, or for two or more of said purposes, it must not take tolls on or for the same until authority is granted therefor by the boards of county commissioners of the county or counties where the flume or abutments, landings or anchorages are situate. But after such authority is granted it may demand and receive such tolls as it is so authorized to take, and may, when necessary, secure the right of way for its flume, and the necessary chutes, raceways, landings, abutments, and anchorages under the provisions of the Code of Civil Procedure.

Historical: Rev. St. 1887, Sec. 2694.	Cross Reference: Grant of authority to take toll: Sec. 1015. Condemnation proceedings: Secs. 5210-5229.
California Legislation: Similar in part: Civ. Code 1872, Sec. 528; Deering's Code, ib.; similar as amended: Kerr's Code, ib.	

When Franchise Ceases.

Sec. 2831. Every such corporation ceases to be a body corporate:
First. If, within one year from filing its articles of incorporation it has not commenced the construction of its bridge, flume, or boom, as the case may be, and if within two years from such filing its bridge or boom is not completed;
Second. If, when the bridge or boom of such corporation is destroyed, it is not reconstructed and ready for use within two years thereafter;
Third. If the ferry of any such corporation is not in running order within four months after authority to take tolls thereon is obtained, or if at any time thereafter it ceases, for a like term consecutively, to perform the duties imposed by law.

Historical: Rev. St. 1887, Sec. 2695.	Civ. Code 1872, Sec. 529; Deering's Code, ib.; as amended: Kerr's Code, ib.
California Legislation: Different:	

Application to Individuals.

Sec. 2832. When a bridge, ferry, flume, or boom is operated or owned by a natural person, this chapter is applicable to such person in like manner as it is applicable to corporations.

Historical: Rev. St. 1887, Sec. 2696.	Code 1872, Sec. 531; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Similar: Civ.	

CHAPTER 4.
TELEGRAPH, TELEPHONE AND ELECTRIC POWER CORPORATIONS.

Section	Section
2833. Right to use highways.	2837. Rights of way for electric power companies.
2834. Injury to company's property.	
2835. Penalty for malicious injury.	
2836. Transfer of rights and franchises.	

Right to Use Highways.

Sec. 2833. Telegraph and telephone corporations may construct lines of telegraph or telephone along and upon any public road or highway, along or across any of the waters or lands within this State,

and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines in such manner and at such points as not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

Historical: Rev. St. 1887, Sec. 2700.

California Legislation: Same except "telephone" corporations omitted: Civ. Code 1872, Sec. 536; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Cross Reference: Corporations have

the right to construct and maintain lines of telegraph and telephone and connect the same with other lines: Const. Art. 11, Sec. 13.

Cited: O. S. L. Ry. Co. v. Postal Tel. Cable Co. (1901) 111 Fed. Rep. 842.

Injury to Company's Property.

Sec. 2834. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby.

Historical: Rev. St. 1887, Sec. 2701.

California Legislation: Same except "telephone" corporations omitted: Civ.

Code 1872, Sec. 537; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Penalty for Malicious Injury.

Sec. 2835. Any person who wilfully or maliciously does any injury to any telegraph or telephone property mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

Historical: Rev. St. 1887, Sec. 2702.

California Legislation: Same except "telephone" corporations omitted: Civ. Code 1872, Sec. 538; Deering's Code, ib.; same as amended; Kerr's Code, ib.

Cross Reference: Criminal liability for injuring telegraph or telephone property: Sec. 7136.

Transfer of Rights and Franchises.

Sec. 2836. Any telegraph or telephone corporation may, at any time, with the consent of the persons holding two-thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey, any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

Historical: Rev. St. 1887, Sec. 2703.

California Legislation: Same except "telephone" corporations omitted: Civ.

Code 1872, Sec. 540; Deering's Code, ib.; same as amended; Kerr's Code, ib.

Rights of Way for Electric Power Companies.

Sec. 2837. Any person, company, or corporation, incorporated or that may hereafter be incorporated under the laws of this State or of any State or Territory of the United States, and doing business in this State, for the purpose of supplying, transmitting, delivering, or furnishing electric power or electric energy by wires, cables, or any other method or means, shall have and is hereby given the right to erect, construct, maintain, and operate all necessary lines upon, along and over any and all public roads, streets and highways, except within the limits of incorporated cities and towns and across the right of way of any railroad or railroad corporation, together with poles, piers, arms, cross-arms, wires, supports, structures and fixtures, for

the purposes aforesaid, or either of them, in such manner and at such places as not to incommode the public use of the road, highway, street, or railroad, or to interrupt the navigation of water, together with the right to erect, construct, maintain and operate upon said electric power line a telephone line to be used only in connection with the said electric energy and power line: *Provided*, That the corporation, company or person exercising the right of way herein and hereby granted, shall first apply to the board of county commissioners for permission to construct in the manner provided by law, and to acquire a right of way, and shall give to the county into or through which the right of way herein and hereby granted is exercised, a bond, with surety to be approved by the board of county commissioners, in the sum of five thousand dollars, conditioned to hold the said county harmless from any and all liability on account of the erection, construction, maintenance, or operation of the said electric line or lines: *Provided, further*, That nothing in this section shall be construed to mean the right to occupy public roads for any railroad or car line of any kind.

Historical: Laws 1903, 343, Sec. 1.

Cross Reference: Obtaining author-

ity for stringing electric wires over highways: Sec. 1927.

CHAPTER 5.

WATER AND CANAL CORPORATIONS.

Section

2838. Contracts for municipal water supply.
2839. Fixing water rates.
2840. Right of way granted.
2841. Works not to obstruct highways.

Section

2842. Water users associations: Exemption from taxes.
2843. Same: Record of articles and subscriptions.
2844. Annual report of irrigation companies.

Contracts for Municipal Water Supply.

Sec. 2838. No corporation formed to supply any city or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years.

Historical: Rev. St. 1887, Sec. 2710.

California Legislation: Similar: Civ. Code 1872, Sec. 548; Deering's Code, ib.; Kerr's Code, ib.

Cited: Boise City Artesian Hot & Cold Water Co. v. Boise City (1903) 123 Fed. Rep. 232.

Application to Individuals: This section and the two following sections apply only to corporations furnishing water to cities, etc., and have no application to contracts between an individual and a city for furnishing such water, and an individual who so contracts, is not obliged to furnish the

city, water free of charge for fire purposes, as is provided in case of corporations by the next session. Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969.

Actions—Pleading: In an action to compel a water company to furnish a city with free water in case of fire, the complaint must set forth the ordinance and contract by which the company is authorized to supply water to the city. (Sullivan, J., dissents.) Boise City v. Artes. H. & C. W. Co. (1895) 4 Ida. 351; 39 Pac. 562.

Fixing Water Rates.

Sec. 2839. All persons, companies, or corporations supplying water to towns and cities, must furnish pure, fresh and healthful water to the inhabitants thereof for family use, business houses, lawns and all domestic purposes so long as their supply permits, without distinction of person, upon demand in writing therefor, under such reasonable rules and regulations as the person, company, or corporation supplying water, may, from time to time, establish, and at such rates as established in the manner hereinafter specified; and must also furnish water to the extent of its means in case of fire, or other great necessity, at reasonable rates established in the manner hereinafter specified.

The rates to be charged for water must be determined by commissioners to be selected as follows: Two by the town or city authorities, or when there are no town or city authorities, then by the board of county commissioners of the county, the two said commissioners so selected to be taxpayers of such town or city; said town or city authorities must, within ten days after the appointment of the two commissioners so selected, give notice in writing to said person, company, or corporation supplying water, of the appointment of such commissioners and the names of each, and within thirty days thereafter two other commissioners, taxpayers of said town or city, must be selected by the person, company or corporation supplying water, and in case a majority of the four commissioners so selected cannot agree on the rates to be fixed, they must select a fifth commissioner, who must also be a taxpayer of such town or city, and if they cannot agree upon a fifth commissioner, then the probate judge of the county, must, within ten days after notice to him by said commissioners, that they are unable to agree upon a fifth commissioner, select a fifth commissioner qualified as aforesaid. The decision of a majority of the commissioners thus selected must fix and determine the rates to be charged for water for all the uses and purposes heretofore specified, for the ensuing three years from the date of such decision, and until new rates are established as herein provided. The decision of such commissioners so selected must be made within ninety days from the date such board of water commissioners is complete: *Provided*, That any person, company, or corporation supplying water, and failing or refusing within the time above specified to appoint such commissioners so required of them, shall forfeit the sum of one hundred dollars per day for every day thereafter and until such commissioners are appointed: *Provided, further*, That nothing in this section contained shall relieve said town or city authorities from their duty to appoint the commissioners herein specified within a reasonable time after the granting of a franchise to any person, company, or corporation to supply water as aforesaid: *Provided, further*, That said commissioners shall receive a reasonable compensation for their services in establishing such water rates, one-half of said sum to be paid by the town or city, and one half by such person, company, or corporation supplying water: *Provided, further*, That said commissioners shall be empowered to incur any other expense that may be necessary to aid them in establishing such water rates, and one-half of such expense shall be paid by the city or town, and the other half by such person, company, or corporation supplying water.

Historical: Rev. St. 1887, Sec. 2711; amended Laws 1905, 192, Sec. 1; amended Laws 1907, 555, Sec. 1.

California Legislation: Similar in part: Civ. Code 1872, Sec. 549; as amended: Deering's Code, ib.; as amended: Kerr's Code ib.

Amendment: This section, prior to the amendment of 1905, required water companies to furnish water in case of fire or other great necessity, free of charge. The following decisions construe the section prior to amendment.

Cited: Boise City v. Artes. H. & C. W. Co. (1895, 4 Ida. 351; 39 Pac. 562; Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969; Spotswood v. Morris (1906) 12 Ida. 360; 85 Pac. 1094.

Constitutionality: The provisions of this section requiring water companies to furnish cities with free water for

fire purposes, are constitutional. Boise City v. Artes. H. & C. W. Co. (1895) 4 Ida. 351; 39 Pac. 562.

Not Retroactive: The provision of this section requiring water companies to furnish free water in case of fire, cannot be made to apply to a corporation having a pre-existing contract for the supply of water to a city, under which it was entitled to charge for such water. Bellevue Water Co. v. City of Bellevue (1893) 3 Ida. 739; 35 Pac. 693.

Free Water to Cities: Under the provisions of this section, water companies must furnish, free of charge, water for street sprinkling purposes, flushing sewers, etc., as this statute was taken from California and has been so construed by the courts of that State. Boise City Water Co. v. Boise City (1903) 123 Fed. Rep. 232.

Right of Way Granted.

Sec. 2840. Any corporation created under the provisions of this title for the purposes named in this chapter, subject to the reasonable rules and directions of the city or town authorities as to the mode or manner of using such right of way within the city or town, and subject to the reasonable rules and directions of the board of county commissioners as to the mode and manner of using any right of way outside the corporate limits of such city or town, may use so much of the streets, alleys and ways in any city or town, or the public roads and highways within the county, as may be necessary for the laying of pipes for conducting water to its consumers, or the building and maintaining of ditches, canals, pipes, flumes and aqueducts in conducting water from outside points to the corporate limits of said city or town.

Historical: Rev. St. 1887, Sec. 2712; amended Laws 1905, 192, Sec. 2.

California Legislation: Similar in part: Civ. Code 1872, Sec. 550; Deering's Code, ib.; repealed 1905.

Cited: Boise City v. Artesian H. & C. W. Co. (1895) 4 Ida. 351; 39 Pac. 562; Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969.

Works Not to Obstruct Highways.

Sec. 2841. All water works must be so laid and constructed as not to obstruct public highways.

Historical: Rev. St. 1887, Sec. 2713, last clause of section. The first portion relating to construction and repair of bridges is superseded by Laws 1899, 380, Sec. 25 (See Code Sec. 3310).

California Legislation: See Civ. Code 1872, Sec. 551; Deering's Code, ib.; Kerr's Code, ib.

Cited: Jack v. Village of Grangeville (1903) 9 Ida. 291; 74 Pac. 969.

Water Users' Associations: Exemption From Taxes.

Sec. 2842. Any water users' association which is organized in conformity with the requirements of the United States under the Reclamation act of June 17, 1902, and which, under its articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of

twenty dollars for the filing and recording of its articles of incorporation and the issuance of certificate of incorporation.

Historical: Laws 1905, 373, Sec. 3.
The reclamation act may be found in
U. S. Comp. Stat. (1905 Sup.) 349.

Cross Reference: License fees of
corporations: Sec. 2785.

Same: Record of Articles and Subscriptions.

Sec. 2843. It shall be the duty of the county recorders of counties in which water users' associations are organized, to provide record books containing printed forms of the articles of incorporation and stock subscriptions to the stock of water users' associations organized in conformity with the requirements of the United States under the Reclamation act, and to use such books for recording stock subscriptions of such associations; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein and not for the printed form.

Historical: Laws 1905, 373, Sec. 4.

Annual Report of Irrigation Companies.

Sec. 2844. It shall be the duty of any corporation owning or controlling any canal or irrigation works for the distribution of water under a sale or rental thereof in this State, to file, before the first Monday in January in each year, in the office of the county recorder of every county in which said company distributes water under such sale or rental, upon a blank form to be prepared and furnished by him upon application, and a duplicate copy thereof with the State Engineer, a statement showing the condition of the business of said corporation on December 31st, of the preceding year, which statement shall include the following:

First. A general description of the property of the company.

Second. A statement of its cost and estimated present value.

Third. The total amount and the character of all indebtedness of the company, including a list of all perpetual water rights sold and outstanding and their respective dates of execution, and the amount received from such sales.

Fourth. The amount due to said company and from what sources.

Fifth. The income of the company during the preceding calendar year and from what sources.

Sixth. The expenditures by the company during the same period and for what purposes.

Seventh. The total area of land watered from its works during the preceding season; that part of said area having no water rights attached being given separately.

Eighth. The number of acres of land under said ditch susceptible of irrigation.

Ninth. The capacity of its works and the quantity of water carried during the said season as nearly as known.

Tenth. The amounts of recorded appropriations and the date of each.

Said statement shall be sworn to by the proper official of said corporation. If the proper official, or principal accounting officer of said corporation shall neglect or refuse to file the statement herein required, the said recorder shall notify him of such failure, and if for

thirty days after said notification he still neglects or refuses to file such statement, he shall be guilty of a misdemeanor, and shall be subject to a fine of not exceeding three hundred dollars, or to imprisonment in the county jail of his county for not more than six months, or to both such fine and imprisonment. Said statement required to be filed under this section shall be kept on file in the office of said recorder and shall be open to inspection.

Historical: Laws 1899, 380, Sec. 35.

CHAPTER 6.

HOMESTEAD CORPORATIONS.

Section	Section
2845. Definition and term of existence.	2850. Limitations on real estate holdings.
2846. Requirements as to by-laws.	2851. Winding up of corporation.
2847. Sale of delinquent stock.	2852. Payment of premiums.
2848. Limitation on indebtedness.	2853. Publication of annual financial statement.
2849. Minors and married women may be stockholders.	2854. Same: Publication at capital.

Definition and Term of Existence.

Sec. 2845. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

Historical: Rev. St. 1887, Sec. 2720.	Code 1872, Sec. 557; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Requirements as to By-Laws.

Sec. 2846. Such corporations must specify in their by-laws the times when the installments of the capital stock are payable, the amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

Historical: Rev. St. 1887, Sec. 2721.	Code 1872, Sec. 558; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Sale of Delinquent Stock.

Sec. 2847. Whenever any shares of stock are declared forfeited by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town, or county where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares may be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made, the secretary must, on receipt of the purchase money,

transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all installments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

Historical: Rev. St. 1887, Sec. 2722.
California Legislation: Same: Civ.

Code 1872, Sec. 559; Deering's Code, ib.; Kerr's Code, ib.

Limitation on Indebtedness.

Sec. 2848. Homestead corporations may borrow money for the purposes of the corporation not exceeding at any one time one-fourth of the aggregate amount of shares or parts of shares actually paid in, and the income thereof; no greater rate of interest must be paid therefor than twelve per cent per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become due thereon, will not exceed ninety per cent of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

Historical: Rev. St. 1887, Sec. 2723.
California Legislation: Same: Civ.

Code 1872, Sec. 560; Deering's Code, ib.; Kerr's Code, ib.

Minors and Married Women May Be Stockholders.

Sec. 2849. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

Historical: Rev. St. 1887, Sec. 2724.
California Legislation: Same: Civ.

Code 1872, Sec. 561; Deering's Code, ib.; Kerr's Code, ib.

Limitations on Real Estate Holdings.

Sec. 2850. Homestead corporations must not purchase and sell, or otherwise acquire and dispose of, real property or any interest therein, or any personal property for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property or any interest therein, which in the aggregate exceeds in cash value the sum of fifty thousand dollars. For any violation of the provisions of this section, corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction, such forfeiture may be adjudged, and the judgment carries with it costs of proceedings.

Historical: Rev. St. 1887, Sec. 2725.
California Legislation: Same except
 "two hundred" for "fifty" thousand

dollars, line 6: Civ. Code 1872, Sec. 562; Deering's Code, ib.; Kerr's Code, ib.

Winding Up of Corporation.

Sec. 2851. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this title. No dividend of funds must be made on termination of its corporate existence until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among its shareholders in proportion to their respective interests, or upon the application of a majority in interest of the stockholders, must sell and dispose of any or all real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders or may, at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums at auction or otherwise, among the shareholders.

Historical: Rev. St. 1887, Sec. 2726.

California Legislation: Same except "part" for "title", line 4: Civ. Code

1872, Sec. 563; Deering's Code, ib.; Kerr's Code, ib.

Payment of Premiums.

Sec. 2852. Such premiums on lots may be made payable at the time they are bid off, and if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the by-laws for the sale of shares on account of delinquent installments and premiums.

Historical: Rev. St. 1887, Sec. 2727.

California Legislation: Same: Civ.

Code 1872, Sec. 564; Deering's Code, ib.; Kerr's Code, ib.

Publication of Annual Financial Statement.

Sec. 2853. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in a newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks if published in a daily, paper. The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities.

Historical: Rev. St. 1887, Sec. 2728.

California Legislation: Same: Civ.

Code 1872, Sec. 565; Deering's Code, ib.; Kerr's Code, ib.

Same: Publication at Capital.

Sec. 2854. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published at the capital of the State.

Historical: Rev. St. 1887, Sec. 2729.

California Legislation: Same except "in an adjoining county" for "at the

capital of the State"; Civ. Code, 1872, Sec. 566; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 7.

INSURANCE COMPANIES.

Article

1. Capital stock, property holdings and dividends.
2. Financial statements, license taxes and examination of companies.

Article

3. Issuance of policies.
4. Miscellaneous provisions.

Note: The appointment, qualifications, salary and general duties of the Insurance Commissioner are provided for in the Pol. Code, Secs. 161-169.

ARTICLE 1.

CAPITAL STOCK, PROPERTY HOLDINGS AND DIVIDENDS.

Section

2855. Capital required of insurance companies.
2856. Same: Foreign companies.
2857. Completion of capital stock.
2858. When capital must be paid up.
2859. Certificate of paid up capital.

Section

2860. Limitation on real estate holdings.
2861. Payment of dividends.
2862. Investment of funds of fire companies.
2863. Limitations on dividends.

Capital Required of Insurance Companies.

Sec. 2855. It shall be unlawful for any fire, marine, inland, life or health or casualty insurance company, incorporated by or under, or organized pursuant to, the laws of any foreign government or of any State or Territory of the United States or for any person or persons, directly or indirectly, to take any risks or transact any business of fire, marine, inland, life, health or casualty insurance in this State, unless possessed of an actual paid up capital or assets of not less than one hundred thousand dollars.

Historical: Laws 1901, 165, Ch. 2, Sec. 7.

Same: Foreign Companies.

Sec. 2856. No company incorporated by or organized under the laws of any other State or government, shall transact business in this State unless it is possessed of the actual amount of capital required of any company organized by the laws of this State, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States, or of this State, or in interest paying bonds, when they are at or above par, of the State in which the company is located, or of some other State, or in county, municipal or school district bonds in either or both of said States, or in notes or bonds secured by mortgages on unencumbered real estate within this or the State where such company is located, worth double the amount loaned thereon; such interest bearing bonds, notes and bonds secured by mortgages to be worth in the aggregate one hundred thousand dollars.

Historical: Laws 1901, 165, Ch. 2, Sec. 6; amended Laws 1903, 253, Sec. 1; amended Laws 1905, 255, Sec. 1.

Completion of Capital Stock.

Sec. 2857. After the certificate of incorporation of an insurance

company is issued, as provided in Chapter 1 of this title, the directors named in the articles of incorporation must proceed in the manner specified in their by-laws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and installments thereon, and to collect the same, as in this title provided.

Historical: Rev. St. 1887, Sec. 2740.
California Legislation: Similar: Civ.

Code 1872, Sec. 414; Deering's Code, ib.; Kerr's Code, ib.

When Capital Must Be Paid Up.

Sec. 2858. The entire capital stock of every fire insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent of the whole capital stock is paid up.

Historical: Rev. St. 1887, Sec. 2745.
California Legislation: Same except "or marine" inserted after "fire", line

1: Civ. Code 1872, Sec. 424; Deering's Code, ib.; Kerr's Code, ib.

Certificate of Paid Up Capital.

Sec. 2859. The president and a majority of the directors must, within thirty days after the payment of the twenty-five per cent of the capital stock, and also within thirty days after the payment of the last installment or assessment of the capital stock limited and fixed, prepare, subscribe and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county recorder of the county where the principal place of business of the corporation is located.

Historical: Rev. St. 1887, Sec. 2746.
California Legislation: Same except "clerk" for "recorder", line 8, and "and a duplicate thereof similarly ex-

ecuted, with the Insurance Commissioner" added: Civ. Code 1872, Sec. 425; Deering's Code, ib.; Kerr's Code, ib.

Limitation on Real Estate Holdings.

Sec. 2860. No insurance corporation must purchase, hold or convey real estate, except as hereinafter set forth, to-wit:

First. Such as is requisite for its accommodation in the convenient transaction of its business, not exceeding in value thirty thousand dollars;

Second. Such as is conveyed to it, or to any person for it, by way of mortgage or in trust or otherwise, to secure or provide for the payment of loans previously contracted, or for moneys due;

Third. Such as is purchased at sales upon deeds of trust or judgments obtained or made for such loans or debts;

Fourth. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

All such real estate, so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same.

Historical: Rev. St. 1887, Sec. 2741.

California Legislation: Same except "one hundred and fifty thousand" for "thirty thousand", subd. 1, also addi-

tional provisions: Civ. Code 1872, Sec. 415; Deering's Code, ib.; amended: Kerr's Code, ib.

Payment of Dividends.

Sec. 2861. The directors of every insurance corporation, at such times as their by-laws provide, must make, declare and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested, as to them appears advisable; but the moneys received, and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend, must not be treated as profits nor divided except as provided in this chapter.

Historical: Rev. St. 1887, Sec. 2743.

California Legislation: Same except "in Chapter 2 of this title" for "in

this chapter", last words: Civ. Code 1872, Sec. 417; Deering's Code ib.; Kerr's Code, ib.

Investment of Funds of Fire Companies.

Sec. 2862. Every fire insurance corporation may, by its board of directors or as the by-laws direct, invest its funds in loans upon real or personal property, or in the purchase of stocks, bonds, or other securities, but no loan must be made on the stock of the corporation as security.

Historical: Rev. St. 1887, Sec. 2748.

California Legislation: Same except "and marine" inserted after "fire".

line 1: Civ. Code 1872, Sec. 427; different as amended: Deering's Code, ib.; repealed 1905.

Limitations on Dividends.

Sec. 2863. No corporation transacting fire insurance business under the laws of this State, must make any dividends except from profits remaining on hand after retaining unimpaired:

First. The entire subscribed capital stock;

Second. All the premiums received or receivable on outstanding risks;

Third. A sum sufficient to pay all losses reported or in the course of settlement, and all liability for expenses and taxes.

Historical: Rev. St. 1887, Sec. 2750.

California Legislation: Similar but including marine insurance: Civ.

Code 1872, Sec. 429; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

ARTICLE 2.

FINANCIAL STATEMENTS, LICENSE TAXES AND EXAMINATION OF COMPANIES.

Section

2864. Annual statement of condition of company.

2865. Same: Contents.

2866. Publication of financial statement.

Section

2867. Annual statement of premiums: Tax.

2868. Inquiries as to condition of companies.

2869. Impairment of assets.

Annual Statement of Condition of Company.

Sec. 2864. It shall be the duty of the president, or the vice president and secretary of every insurance company doing business in this

State, annually, on or before the first day of April of each year, to prepare, under oath, and deposit with the Insurance Commissioner a full, true and complete statement of the condition of said company on the last day of the month of December preceding.

Historical: Laws 1901, 165, Ch. 2, Sec. 2.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Same: Contents.

Sec. 2865. The annual statement required by the preceding section shall exhibit the following items and facts:

1. The name of the company, and where located.
2. The names and residences of the officers of the company doing business in the State.
3. The amount of the capital stock or assets of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: The real estate owned by such company; the amount of cash on hand and deposited in banks to the credit of the company; the amount of cash in the hands of agents; the amount of cash in course of transmission; the amount of loans secured by first mortgage on real estate, with the rate of interest thereon; the amount of all bonds and other loans with the rate of interest thereon; all other securities, their description and value.
6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; the amounts due banks or other creditors; the amount of money borrowed by the company; the rate of interest thereon and how secured; the net value of all policies in force, calculated as per the combined experience table of mortality, at four per cent interest, and all other claims against the company, describing the same.
7. Net surplus over all liabilities.
8. The income of the company during the preceding year, stating the amount received for premiums, specifying separately health, life, fire, marine or inland premiums, deducting reinsurance; the amount received for interest and from all other sources.
9. The expenditures during the preceding year, specifying the amount of losses paid during said term; the amount paid for return premiums.
10. The amount of risk written during the preceding year.

Historical: Laws 1901, 165, Ch. 2, Sec. 3.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Publication of Financial Statement.

Sec. 2866. Every company, corporation, association or society transacting the business of life insurance within the State of Idaho, shall publish, or cause to be published soon after the first of January, and prior to the first of April, in some paper published in the Capital, a statement showing the exact conditions of its affairs on the last day of the month of December, preceding.

Historical: Laws 1901, 165, Ch. 2, Sec. 20. Final clause of section; the

first portion comprises Secs. 2881 and 2869.

Annual Statement of Premiums: Tax.

Sec. 2867. All insurance companies now doing business in this State, or that may hereafter do business in this State, under the provisions of this chapter, must file with the Insurance Commissioner annually, on or before the fifteenth day of April of each year, a statement under oath stating the amount of all premiums received by said company during the year ending December 31st preceding in this State, and the amount actually paid policy holders during the same time, and shall pay into the State Treasury a tax of two per centum on all such premiums collected, less the amount of all losses actually paid policy holders, and premiums returned. The Commissioner shall file such verified statement and schedule in his office and certify the amount of gross receipts, less amount of losses actually paid policy holders, and premiums returned as aforesaid to the State Treasurer. Within thirty days thereafter such insurance company shall pay or cause to be paid into the State Treasury a tax of two per centum, or two per centum upon all such gross receipts, less such amounts of losses actually paid policy holders and premiums returned in the State of Idaho, which payment, when made, shall be in lieu of all taxes upon the personal property of such company, and the shares of stock or assets therein. Any organization failing or refusing to render such statement and to pay the required tax of two per centum thereon for more than thirty days after the time so specified, shall be liable to a fine of one hundred dollars for each additional day of delinquency, and the taxes may be collected by distraint, and a fine recovered by an action to be instituted by the Attorney General in the name of the State, in any court of competent jurisdiction, and the Commissioner shall revoke the license and authority of such delinquent company until such payment of taxes and fine, should any be imposed, is fully paid, and notice thereof is given to the Insurance Commissioner: *Provided*, That all real property, if any, of such company, shall be listed, assessed and taxed the same as real property of like character of individuals.

Historical: Laws 1901, 165, Ch. 2, Sec. 13. The three concluding words "by said company" are omitted as meaningless.

Application to Mutual Companies:
A mutual co-operative insurance com-

pany organized under Laws 1903, 74, need not pay the annual license and taxes required by this section. *Idaho Mut. etc. Ins. Co. v. Myers* (1904) 10 Ida. 294; 77 Pac. 628.

Inquiries as to Condition of Companies.

Sec. 2868. The Insurance Commissioner may address inquiries to any insurance corporation or association doing business in this State, or to any officer thereof, in relation to its doings or conditions or any other matter connected with the transactions. It shall be the duty of every corporation or officer so addressed to properly reply, in writing, to such inquiries. Whenever the Commissioner shall deem it expedient so to do, or when five responsible persons shall file with him written charges against any such corporation, alleging that any statement or return filed by it with such Commissioner is false, or that its affairs are in an unsound condition, he shall, in person, or by someone to be appointed by him for that purpose, not an officer or agent of, or in any manner interested in, any insurance corporation doing business in this State, except as a policy holder, examine into

its affairs and conditions. It shall be the duty of the corporation, its officers or agents, to cause its books to be opened for inspection, and to pay all reasonable expense of and compensation for such examination upon the certificate and the requisition therefor of said Commissioner, which expense, however, shall not exceed five dollars a day during the time of the examination, and five cents per mile for traveling by the most direct route in going and coming from the place where such examination took place; but no corporation examined shall, directly or indirectly, pay, by way of gift, gratuity or otherwise, any other or further sum to said Commissioner or examiner for services, extra services, or for purposes of legislation or on any other pretense whatever. Any Commissioner, examiner, officer, clerk or employee of any insurance company violating any provision of this section shall be guilty of a misdemeanor.

Whenever it shall appear to the Commissioner, from his own examination or the report of the person appointed by him, that the condition of any company examined is unsound, he shall revoke the certificate granted such company, and cause a notification thereof to be published in a daily paper at the Capital, and mail a copy thereof to each agent of the company, and the agent or agents thereof, after such notice, shall be required to discontinue doing business for such company.

The Commissioner shall, in like manner and upon like conditions, examine insurance corporations applying for admission to transact business in this State, and if the affairs or conditions of any such corporation do not fully meet with the requirements of the law, he shall withhold his certificate: *Provided, however,* That a certificate from the insurance commissioner of any State who has recently examined the affairs of said company shall be accepted as evidence as to the condition of the company.

Historical: Laws 1901, 165, Ch. 2, Sec. 17.

Impairment of Assets.

Sec. 2869. No association or society shall be admitted or permitted to do business within the State of Idaho, if it shall appear to the satisfaction of the Insurance Commissioner, after examination or other evidence, that its assets or capital stock, or membership is seriously impaired or decreasing.

Historical: Laws 1901, 165, Ch. 2, Sec. 20. Middle clause of section; the

first part is contained in Sec. 2881, and the last part in Sec. 2866.

ARTICLE 3.

ISSUANCE OF POLICIES.

Section

- 2870. Insurance against fire.
- 2871. Issuing insurance when losses equal capital.
- 2872. Execution of policies.
- 2873. Maximum risks: Re-insurance.
- 2874. Total loss: Return of un-earned premium.
- 2875. Risks to be written in authorized companies.

Section

- 2876. Agents must produce certificate.
- 2877. Transacting business without certificate: Penalty.
- 2878. Policies to be countersigned by resident agents.
- 2879. Same: Penalty for violation.
- 2880. Discrimination prohibited.
- 2881. Assessment policies must be so stamped.

Insurance Against Fire.

Sec. 2870. Every corporation formed for fire insurance may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be re-insured.

Historical: Rev. St. 1887, Sec. 2747.

California Legislation: Same except "fire or marine insurance or both" for

"fire insurance", line 1: Civ. Code 1872, Sec. 426; Deering's Code, ib.; Kerr's Code, ib.

Issuing Insurance When Losses Equal Capital.

Sec. 2871. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance.

Historical: Rev. St. 1887, Sec. 2744.

California Legislation: Same: Civ.

Code 1872, Sec. 418; Deering's Code, ib.; Kerr's Code, ib.

Execution of Policies.

Sec. 2872. All policies made by insurance corporations must be subscribed by the president or vice president, or in case of the death, absence or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal.

Historical: Rev. St. 1887, Sec. 2742,

California Legislation: Same: Civ.

Code 1872, Sec. 416; Deering's Code, ib.; Kerr's Code, ib.

Maximum Risks: Reinsurance.

Sec. 2873. No fire, marine or inland insurance company doing business in this State shall expose itself to any loss on any one risk, to an amount exceeding ten per cent of its paid up capital, unless the excess shall be reinsured by such company in some other solvent insurance company.

Historical: Laws 1901, 165, Ch. 2, Sec. 10.

Total Loss: Return of Unearned Premium.

Sec. 2874. In the event of the total destruction of any insured property, on which the total amount or agreed loss shall be less than the total amount insured thereon, the insurance company or companies shall return to the insured, the unearned insurance premium for the excess of the insurance over the appraised or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid.

Historical: Laws 1901, 165, Ch. 2, Sec. 11.

Risks to Be Written in Authorized Companies.

Sec. 2875. All fire insurance risks covering property in this State must be written in companies authorized to do business in this State, and only through their licensed agents residing or doing business in this State (reinsurance excepted). Any company violating this section will be liable to a fine of one hundred dollars, and its license will

be revoked for a period of one year. Each annual statement, when filed, must have the certificate of the president, secretary or manager that this section has not been violated.

Historical: Laws 1901, 165, Ch. 2,
Sec. 12.

Agents Must Procure Certificates.

Sec. 2876. It shall not be lawful for any person to act within this State as an agent or otherwise in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company, incorporated in this State or out of it, without first procuring a certificate of authority from the Insurance Commissioner.

Historical: Laws 1901, 165, Ch. 2,
Sec. 1.

Cited: Idaho Mut. etc Ins. Co. v.
Myer (1904) 10 Ida. 294; 77 Pac. 628.

Transacting Business Without Certificate: Penalty.

Sec. 2877. Any person or agent transacting an insurance business without the certificate herein required, or after such certificate shall have been withdrawn or revoked, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding six months, or punished by both such fine and imprisonment.

Historical: Laws 1901, 165, Ch. 2,
Sec. 18. "Punished" inserted before
"by both", etc., to complete the sense.

Policies to be Countersigned by Resident Agents.

Sec. 2878. No insurance company or association not incorporated under the laws of this State, authorized to transact the business of fire, accident, surety, liability or workmen's collective insurance, shall make, write, place, or cause to be made, written or placed any policy, duplicate policy or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this State, except after the said risk has been approved in writing by an agent who is a resident of the community in which said risk is located, and being a regularly licensed and duly commissioned agent to transact insurance business therein, who shall countersign all policies so issued, and receive the commission thereon when the premium is paid. Nothing in this section shall be construed to prevent any such insurance company or association, authorized to transact business in this State, from issuing policies at its principal or department offices covering property in this State: *Provided*, That such policies are issued upon application procured and submitted to such companies by duly authorized agents who are residents of the county and State in which said property is located, which agents shall countersign all policies so issued and receive the commission thereon when paid. No provision in this section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of common carriers, nor the property of such common carriers used or employed in their business as common carriers of freight, merchandise or passengers.

Historical: Laws 1901, 138, Sec. 1.

Same: Penalty for Violation.

Sec. 2879. Any insurance company or association wilfully violating or failing to observe and comply with the provisions of the preceding section, shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereof, and for each failure to observe and comply with the provisions of said section. Such penalty may be collected and recovered in an action brought in the name of the State in any court having jurisdiction thereof. Any insurance company or association which shall neglect or refuse for thirty days after such judgment in any such action to pay and discharge the amount of such judgment, shall have its authority to transact business in this State revoked by the State Treasurer, and such revocation shall continue at least one year from date thereof, nor shall any insurance company or association, whose authority to transact business in this State shall have been so revoked, be again authorized or permitted to transact business herein until it shall have paid the amount of any such judgment, and shall have filed in the office of the State Treasurer a certificate signed by its president or other chief officer, to the effect that the terms and obligations of the provisions of this and the preceding section are accepted by it, as a part of the conditions of its right and authority to transact business in this State.

Historical: Laws 1901, 138, Sec. 2.

Discrimination Prohibited.

Sec. 2880. No insurance corporation or company subject to the provisions of this chapter shall make any discrimination in favor of individuals of the same occupation and expectation of life, and such corporation or company shall not make any contract for insurance, or agreement as to such contract, other than that which is available to each and every applicant for insurance, of the same occupation and expectation of life, to such corporation, company, or any agent thereof. No such corporation or company or agent thereof shall pay or allow, or offer to pay or allow, as an inducement to any person to insure, any rebate of premium, or any special favor or advantage whatever in the dividends to accrue thereon, either by way of services rendered or to be rendered by the applicant for insurance, as an adviser to the company or as a member of an advisory board or other similar board or body, or for service rendered, or to be rendered, of any kind or nature, or any other inducement whatever. Any person who shall so contract with such company or corporation or any agent thereof, or who shall receive any such favor or advantage, shall be deemed an agent or solicitor of insurance within the meaning of this chapter.

A violation of the provisions of this section shall constitute a misdemeanor, and, upon conviction, shall subject the party offending to the payment of a fine of not more than three hundred dollars, or to imprisonment in the county jail for a period not exceeding six months, or to both such fine and imprisonment, and, if it shall appear to the satisfaction of the Insurance Commissioner that any corporation is issuing policies or making contracts that are in violation of

this section, he shall revoke the authority of such corporation to do business in this State.

Any such insurance corporation or company, or the agents of such corporation or company, shall, upon demand, in writing by the Insurance Commissioner, furnish him with the form or forms of all insurance policies, the form or forms of all contracts for insurance, and the form or forms of all other paper or papers pertaining to any contract for insurance, or the maintenance of the same, issued, used, or intended or authorized to be issued or used, by said corporation or company or by its agents or representatives, in and about the business of life insurance carried on by said corporation or company, and upon a failure on the part of such corporation or company, or its agents or representatives, to comply with such demand within a period of fifteen days after service of the same, the Insurance Commissioner shall revoke the authority of such corporation or company to do business in this State. Service of such demand upon an agent of said corporation or company within this State, or a deposit of the same in the postoffice, registered and addressed to the home, or reputed home, office of such corporation or company, shall be sufficient service thereof.

Historical: Laws 1901, 165, Ch. 2, Sec. 19; amended Laws 1903, 253, Sec. 2; amended Laws 1905, 255, Sec. 1.

Assessment Policies Must Be So Stamped.

Sec. 2881. Every policy or certificate issued to a resident of the State of Idaho, by any corporation therein, transacting the business of life insurance upon the assessment plan, or admitted into this State under the laws of Idaho, shall print in bold type (in red ink) in every policy or certificate issued upon the life or lives of the citizens of Idaho, making one of the principal lines near the top thereof, the words, "Issued upon the assessment plan," and the words, "Assessment plan," shall be conspicuously printed (in red ink) in or upon every application, circular, card, advertisement and other printed document issued, circulated or caused to be circulated by such corporation within this State.

Historical: Laws 1901, 165, Ch. 2, Sec. 20. First half of section, omitting "from and after the passage of

this act" as now obsolete; the last half of the section comprises Secs. 2869 and 2866.

ARTICLE 4.

MISCELLANEOUS PROVISIONS.

Section	Section
2882. Companies must file articles and by-laws.	2885. Failure to satisfy judgments: Revocation of authority.
2883. Appointment of agent for service of process.	2886. License of assessment life companies.
2884. Venue of actions: Service of process.	2887. Same: Fees.
	2888. Fees of Commissioner.

Companies Must File Articles and By-Laws.

Sec. 2882. Each life, health, fire, marine, inland or casualty insurance company, shall file with the Insurance Commissioner its acts of incorporation and all amendments thereto, and a copy of its by-

laws, together with the names and residences of each of its officers and directors, all of which shall be certified under the hands of the president and secretary of such company.

Historical: Laws 1901, 165, Ch. 2,
Sec. 4.

Appointment of Agent for Service of Process.

Sec. 2883. Any insurance company not incorporated or organized under the laws of this State, desiring to transact business in this State, shall file with the Insurance Commissioner of this State a written instrument of power of attorney, duly signed and sealed, appointing and authorizing some person who shall be a resident of this State, to acknowledge or receive service of process, and upon whom process may be served for and in behalf of such company in all proceedings that may be instituted against such company in any court of this State, or any court of the United States in this State, and consenting that service of process upon any agent or attorney appointed to accept service under the provisions of this section, shall be taken and held to be as valid as if served upon the company, and such instrument shall further provide that the authority of such attorney shall continue until revocation of his appointment is made by such company, by filing a similar instrument with the said Insurance Commissioner, whereby another person shall be appointed as such attorney.

Historical: Laws 1901, 165, Ch. 2,
Sec. 5.

Venue of Actions: Service of Process.

Sec. 2884. Suits may be instituted and prosecuted against any fire, marine, inland, life or health insurance company in any county where loss occurs, or where the policy holder instituting such suit resides, and the process in any such suit may be served upon any person in this State, holding a power of attorney for such company.

Historical: Laws 1901, 165, Ch. 2,
Sec. 8.

Failure to Satisfy Judgments: Revocation of Authority.

Sec. 2885. Should any life, health, fire, marine or inland insurance company fail to pay off and satisfy any execution that may lawfully issue, or any final judgment, against said company, within thirty days after the officer holding such execution has demanded payment thereof from the duly authorized officer, agent or attorney of such company in this State or out of it, such officer shall immediately certify such demand and failure to the Insurance Commissioner, and thereupon the Commissioner shall forthwith declare null and void the certificate of authority issued by him to such company, and such company shall be prohibited from transacting any business in this State until said execution shall be fully satisfied and discharged, and until such Commissioner shall renew his certificate of authority to such company.

Historical: Laws 1901, 165, Ch. 2,
Sec. 9.

License of Assessment Life Companies.

Sec. 2886. Companies or associations organized under the laws of any other State of the United States, carrying on the business of life or casualty insurance on the assessment or natural premium plan, and having cash assets of the sum of not less than one hundred thousand dollars, invested as required by the laws of this State regulating other insurance companies, shall be licensed by the Insurance Commissioner to do business in this State, and be subject only to the provisions of this chapter: *Provided, however,* That such company or association shall first file with the Commissioner a certified copy of its charter; a written agreement appointing the Insurance Commissioner and his successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it may be served; a certificate under oath of its president and secretary that it is paying, and for the twelve months next preceding has paid, the maximum amount named in its policies or certificates in full; a statement under oath of its president and secretary of its business for the year ending December 31st preceding; a certified copy of its constitution and by-laws; a copy of its policy and application; a certificate from the proper authority in its home state that said company or association is legally entitled to do business in such home State, and has at least one hundred thousand dollars surplus assets subject to its indebtedness. It shall be the duty of the Insurance Commissioner to issue a license to any company or association complying with the provisions of this chapter, and every such company or association shall annually thereafter, before such license is renewed, file with the Insurance Commissioner, on or before the first day of May, a statement under oath of its president and secretary, or like officers, of its business ending December 31st of the year preceding.

Historical: Laws 1901, 165, Ch. 2,
Sec. 15.

Same: Fees.

Sec. 2887. Every such company or association shall pay to the Insurance Commissioner, for the use of the State, the following fees: For filing copy of its charter, ten dollars; for filing statement preliminary to its admission, ten dollars; for filing each annual statement after admission, ten dollars; and for each agent's certificate of authority, three dollars.

Historical: Laws 1901, 165, Ch. 2,
Sec. 16.

Fees of Commissioner.

Sec. 2888. The Commissioner shall collect from each accident, health, fire, marine, inland, casualty or fidelity company, transacting business in this State, an annual license of fifty dollars; for filing certified copies of its articles of incorporation, ten dollars; for filing annual statement, ten dollars; for each fire agent's certificate of authority, three dollars—said fire agents' certificates are transferable to successors in office for their unexpired term; from each life insurance Company an annual license of fifty dollars; for filing a certified

copy of its articles of incorporation, ten dollars; for filing each annual statement, ten dollars; for each agent's certificate of authority, five dollars. Said fees are payable at the time of filing the first statement, and, with the exception of the fee for filing the articles of incorporation, annually thereafter at the time of filing the annual statement in April of each year, and before the Commissioner shall issue his certificate of authority.

Blank licenses shall be signed and issued by the State Auditor to the Insurance Commissioner from time to time as required, and charged to him. The Insurance Commissioner shall make monthly reports on the first of each month to the Auditor of the number of licenses issued by him. The money derived from the sale of licenses, and for filing or for other fees under this chapter, shall be paid into the general fund of the State.

Historical: Laws 1901, 165, Ch. 2, Sec. 14; amended Laws 1903, 253, Sec. 3.

CHAPTER 8.

SECRET FRATERNAL INSURANCE SOCIETIES.

Section	Section
2889. Definition: Government: Benefit fund: Beneficiaries.	2897. Contract of beneficiary to pay dues.
2890. Associations already formed to comply.	2898. Benefits exempt from attachment and execution.
2891. Foreign associations.	2899. Place of meeting of governing body.
2892. Association to make reports: Contents.	2900. False statements in application for insurance or benefit.
2893. Service of process on association.	2901. Failure to make report or appoint agent.
2894. Permit to do business: How obtained.	2902. Agent of non-complying society guilty of misdemeanor.
2895. How incorporated.	2903. Fees for report.
2896. Associations shall not employ agents.	2904. Application of chapter.

Note: A similar act may be found in Iowa Ann. Code (1897) Secs. 1822 et seq.

Sec. 2889. A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each association shall have a lodge system, with ritualistic form of work and representative form of government, and shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness or temporary or permanent physical disability, either as a result of disease, accident or old age. *Provided,* That the period in life at which payment of physical disability benefits on account of old age commences, shall not be under seventy years, subject to compliance with its constitution and laws. The fund from which the payment of such benefits shall be made, and the fund from which the expenses of such association shall be defrayed, shall be derived from assessments or dues collected from its members. Payments of death benefits shall be to the families, heirs, blood relatives, affianced husband or affianced wife of, or persons dependent upon,

the member. Such associations shall be governed by this chapter, and shall be exempt from the provisions of the insurance laws of this State, and shall not pay a corporation or other tax, and no law hereinafter passed shall apply to them unless they be expressly designated therein. Such fraternal beneficial association may create, maintain, disburse and apply reserve or emergency funds in accordance with its constitution or by-laws.

Historical: Laws 1901, 165, Ch. 3,
Sec. 1.

Associations Already Formed to Comply.

Sec. 2890. All such associations coming within the description set forth in the preceding section, organized under the laws of this or any other State, Province or Territory, and now doing business in this State, may continue such business: *Provided*, That they hereafter comply with the provisions of this chapter regulating annual reports, and the designation of the Commissioner of Insurance as the person upon whom process may be served, as hereinafter provided.

Historical: Laws 1901, 165 Ch. 3,
Sec. 2.

Foreign Associations.

Sec. 2891. Any such association coming within the description set forth in Section 2889, organized under the laws of any other State, Province or Territory, and now doing business in this State, shall be admitted to do business in this State when it shall have filed with the Commissioner of Insurance a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the Commissioner of Insurance of this State as a person upon whom process shall be served as hereinafter provided: *Provided*, That such association shall be shown to be authorized to do business in the State, Province or Territory in which it is incorporated or organized, in case the laws of such State, Province or Territory shall provide for such authorization; and in case the laws of such State, Province or Territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business within the provisions of this chapter, for which purpose the Commissioner of Insurance of this State may personally, or by some person to be designated by him, examine into the condition of affairs, character and business methods, accounts, books and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand thereof, and the expense of such examination shall be limited to fifty dollars: *Provided*, Such person appointed to examine into the affairs of any fraternal beneficiary association shall not be a member of, or in any wise connected with, said fraternal beneficiary association.

Historical: Laws 1901, 165, Ch. 3,
Sec. 3.

Association to Make Reports: Contents.

Sec. 2892. Every such association doing business in this State shall, on or before the first day of March of each year, make and file with the Commissioner of Insurance of this State a report of its affairs and operations during the year ending on the 31st day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the Commissioner of Insurance, or may be printed in pamphlet form, and shall be verified, under oath, by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the Commissioner of Insurance under a separate part entitled "Fraternal Beneficiary Associations," and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.

2. Amount indemnity effected thereby.

3. Number of losses or benefit liabilities incurred.

4. Number of losses or benefit liabilities paid.

5. The amount received from each assessment for the year.

6. Total amount paid members, beneficiaries, legal representatives or heirs.

7. Number and kind of claims for which assessments have been made.

8. Number and kind of claims compromised or resisted and brief statement of reasons.

9. Does association charge annual or periodical dues or admission fees.

10. How much on each thousand dollars, annually or per capita, as the case may be.

11. Total amount received, from what source, and the disposition thereof.

12. Total amount of salaries paid to officers.

13. Does association guarantee in its certificate fixed amount to be paid regardless of amount realized from assessments, dues, admission fees and donations.

14. If so, state amount guaranteed, and the security of such guarantee.

15. Has the association a reserve or emergency fund.

16. If so, how is it created and for what purpose, the amount thereof, and how invested.

17. Has the association more than one class.

18. If so, how many, and the amount of indemnity in each.

19. Number of members in each class.

20. If voluntary, so state and give date of organization.

21. If organized under the laws of this State, under what law and at what time; giving chapter and year and date of passage of the act.

22. If organized under the laws of any other State, Province or Territory, state such fact and date of organization, giving chapter and year and date of passage of the act.

23. Number of certificate of beneficiary membership lapsed during the year.

24. Number in force at the beginning and end of year; if more than one class number in each class.

25. Names and addresses of its president, secretary and treasurer, or corresponding officers.

The Commissioner of Insurance is authorized and empowered to address any additional inquiries to any such association in relation to the matter embraced in such report, and such officers of such association as the Commissioner of Insurance may require shall promptly reply in writing, under oath, to all such inquiries.

Historical: Laws 1901, 165, Ch. 3,
Sec. 4.

Service of Process on Association.

Sec. 2893. Each such association now doing or hereafter admitted to do business within this State, not having its principal office in this State, and not having organized under the laws of this State, shall appoint, in writing, the Commissioner of Insurance and his successors in office to be its true and lawful attorneys upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it, which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such certificate, certified by said Commissioner of Insurance, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against any such association is served upon said Commissioner of Insurance, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay the Commissioner of Insurance, at the time of such service, a fee of three dollars, which shall be recovered by him as part of the taxable costs, if he prevails in the suit. The Commissioner of Insurance shall keep a record of all process served upon him, which record shall show the day and hour when such service was made and by whom made.

Historical: Laws 1901, 165, Ch. 3,
Sec. 5.

Permit to Do Business: How Obtained.

Sec. 2894. The Commissioner of Insurance of this State shall, upon the application of any association having the right to do business within this State, as provided by this chapter, issue to such association a permit, in writing, authorizing such association to do business within this State, for which certificate and all proceedings in connection therewith such association shall pay to said Commissioner of Insurance the fee of five dollars.

Historical: Laws 1901, 165, Ch. 3,
Sec. 6.

How Incorporated.

Sec. 2895. Fraternal beneficial associations shall be incorporated in manner as now is or may be hereinafter provided by law.

Historical: Laws 1901, 165, Ch. 3,
Sec. 7.

Association Shall Not Employ Agents.

Sec. 2896. Such association shall not employ paid agents in soliciting or procuring members except in the organization or building up of subordinate bodies, or granting members inducements to procure new members.

Historical: Laws 1901, 165, Ch. 3,
Sec. 8.

Contract of Beneficiary to Pay Dues.

Sec. 2897. No contract between a member and his beneficiary, and the beneficiary, or any other person for him, by which said beneficiary or any person for him, shall pay such members's assessments and dues, or either of them, shall give the beneficiary a vested right in the benefit certificate or in the benefit, or deprive the member of the right to change the name of the beneficiary or revoke the certificate, if any, issued by the association: *Provided*, That such change or revocation be done by written or printed notice to the association in the manner and form provided by law.

Historical: Laws 1901, 165, Ch. 3,
Sec. 9.

Benefits Exempt From Attachment and Execution.

Sec. 2898. The money or other benefit, charity, relief or aid already paid or to be paid, provided or rendered by any association authorized to do business under this chapter, shall not be liable to attachment or execution by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, or by the operation of law, to pay any debt or liability of a certificate holder of any beneficiary named in the certificate, or any person who may have rights thereunder.

Historical: Laws 1901, 165, Ch. 3,
Sec 10.

Place of Meeting of Governing Body.

Sec. 2899. Any such association organized under the laws of this State may provide for the meeting of its legislative or governing body in any other State, Province or Territory wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be as valid in all respects, as if such meetings were held within this State, and when the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies the vote so cast in the subordinate bodies in any other State, Province or Territory, shall be as valid as if cast within this State.

Historical: Laws 1901, 165, Ch. 3,
Sec. 11.

False Statements in Application for Insurance or Benefit.

Sec. 2900. Any person, officer, member or examining physician, who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any association transacting business under this chapter, shall be guilty of a misdemeanor, and, upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both, in the discretion of the court, and any person who shall wilfully make any false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association, for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration, under oath required or authorized by this chapter, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this State.

Historical: Laws 1901, 165, Ch. 3,
Sec. 12.

Cross Reference: Punishment for
perjury: Sec. 6486.

Failure to Make Report or Appoint Agent.

Sec. 2901. Any such association refusing or neglecting to make the report, as provided in this chapter, or to appoint the Commissioner of Insurance as its true and lawful attorney for the purpose of this chapter, shall be excluded from doing business within this State. Said Commissioner of Insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its power, or conduct its business fraudulently, or shall fail to comply with any of the provisions of this chapter, give notice, in writing, to the Attorney General, who shall immediately commence an action against any such association to enjoin the same from carrying on any business. And no injunction against such association shall be granted by any court except on the application of the Attorney General at the request of the Commissioner of Insurance. No such association so enjoined shall have authority to continue to do business until such report shall be made, or overt act or violation complained of shall have been corrected, and until the cost of such action be paid by it: *Provided*, The court shall find that such association was in default as charged; whereupon the Commissioner of Insurance shall reinstate such association, as not until then shall such association be allowed to again do business in this State. Any officer, agent or person acting for any association or subordinate body thereof within this State, while such association shall be enjoined or prohibited from doing business pursuant to this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

Historical: Laws 1901, 165, Ch. 3,
Sec. 13.

Agent of Non-Complying Society Guilty of Misdemeanor.

Sec. 2902. Any person who shall act within this State as an officer, agent, or otherwise for any association which shall have failed, neglected or refused to comply with, or shall have violated any of the provisions of this chapter, or shall have failed or neglected to procure from the Commissioner of Insurance a proper certificate of authority to transact business as provided by this chapter, shall be subject to the penalty provided in the last preceding section for the misdemeanor therein specified.

Historical: Laws 1901, 165, Ch. 3,
Sec. 14.

Fees for Report.

Sec. 2903. Every society to which this chapter is applicable shall pay to the Insurance Commissioner for filing annual statement as provided by this chapter, twenty-five dollars.

Historical: Laws 1901, 165, Ch. 3,
Sec. 15.

Application of Chapter.

Sec. 2904. This chapter shall not apply to any grand or subordinate lodge of the order of Free and Accepted Masons, Independent Order of Odd Fellows as they now exist, nor to similar orders or secret societies, nor to fraternal societies whose subordinate or national bodies pay nothing but funeral or weekly sick benefits, nor to any organization conducted solely for benevolent and charitable purposes, whose members are employed by one corporation or institution, or by more than one similar corporation or institution, or whose membership is confined to one trade, art or profession.

Historical: Laws 1901, 165, Ch. 3,
Sec. 16.

CHAPTER 9.

MUTUAL CO-OPERATIVE INSURANCE COMPANIES.

Section

- 2905. Organization: Corporate style.
- 2906. Filing, approval, and recording of articles.
- 2907. Obligation of members.
- 2908. Corporate meetings.
- 2909. Directors: Election and vacancies.
- 2910. Officers: Election, bond and duties.
- 2911. Agents and employees.
- 2912. By-laws.
- 2913. Collection of assessments: Actions against company.
- 2914. Admission of foreign corporations.

Section

- 2915. Policies: Amounts and how issued.
- 2916. Assessments: How made.
- 2917. Payment of losses.
- 2918. Arbitration of losses.
- 2919. Withdrawal of member.
- 2920. Powers of corporations.
- 2921. Annual statements.
- 2922. Certificate of authority.
- 2923. Unauthorized transaction of business.
- 2924. Acceptance of chapter.

Note: Prior legislation, superseded by the act contained in this chapter, is as follows: Laws 1891, 167; Laws 1899, 111.

Organization: Corporate Style.

Sec. 2905. Any number of persons residing in this State who own

personal or real property of not less than one hundred thousand dollars in value, which they desire to have insured, may associate themselves together for the purpose of mutual co-operative insurance against loss by fire, lightning, tornadoes, cyclones, windstorms and the fidelity of persons, and form an incorporated company for such purposes and issue policies. Such companies shall embody the words, "Mutual Co-operative," in their name.

Historical: Laws 1903, 74, Sec. 1.

License Fee Not Required: A mutual co-operative company organized under this and the following sections,

need not pay the license fee and taxes required by the general insurance law of 1901. *Idaho Mut. etc. Ins. Co. v. Myer* (1904) 10 Ida. 294; 77 Pac. 628.

Filing, Approval and Recording of Articles.

Sec. 2906. The articles of incorporation of such company shall be filed with the Insurance Commissioner for examination. If by him found to be in accordance with the provisions of this chapter, and the name of such company is not similar to the name of any other insurance company organized in this State, he shall thereupon deliver to such company a certified copy of the articles of incorporation, upon which, on being recorded in the office of the recorder of the county where the principal office of such company shall be located, and a copy thereof, certified by the county recorder, filed with the Secretary of State, the Secretary of State must then issue to the corporation, over his official seal, a certificate that a copy of the articles containing the required statement of facts has been filed in his office; and thereupon the persons executing the articles, and their associates and successors, shall be entitled to transact business and issue policies of insurance under the corporate name stated in the articles, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or by law otherwise specially provided. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the Secretary of State, must be received in all courts and elsewhere as prima facie evidence of the facts therein stated.

Historical: Laws 1903, 74, Sec. 2.

Cited: *Idaho Mut. etc. Ins. Co. v. Myer* (1904) 10 Ida. 294; 77 Pac. 628.

Obligation of Members.

Sec. 2907. All persons and corporations, municipal or otherwise, who effect insurance in any company organized under the provisions of this chapter, shall thereby become members of such company, and shall continue so to be during the period that their insurance is in force and no longer. All persons so insured shall give their obligation to such company, in an application binding themselves, their heirs, executors, administrators, successors or assigns, to pay all legal assessments made upon them by such company. They shall also, at the time of effecting insurance, pay such an amount in cash as is provided for in the by-laws, but no company shall organize or transact business that does not provide for a reasonable amount of cash to be paid down at the time the insurance is taken, in proportion to the risk that is to be carried. The application of any corporation or municipality for insurance in any company, shall be signed by the officer or officers authorized to sign ordinary contracts of such corporations or municipalities.

Historical: Laws 1903, 74, Sec. 3.

Corporate Meetings.

Sec. 2908. An annual meeting of such company for the purpose of electing directors as provided in the articles of incorporation, shall be held in each year at the principal office of such company, of which all members shall be notified in such manner and form as the by-laws shall provide. Special meetings may be held by order of the president, upon the written request of a majority of all directors, with a like notice. Each member may vote by ballot for as many persons as there are directors to be elected.

Historical: Laws 1903, 74, Sec. 4.

Directors: Election and Vacancies.

Sec. 2909. The number of directors shall be not less than six or more than twelve. Of those elected at the time of the organization of such company, one-third shall be elected for one year, one-third for two years and one-third for three years. At each annual meeting thereafter a number equal to one-third of the whole number of directors shall be elected for three years, or until their successors are elected and qualified. Such directors are to manage the affairs of the company. Vacancies in the board of directors may be filled by the remaining directors, and such board of directors, or a majority of them, when legally convened at the principal office of the company, shall be competent to exercise all the powers granted by this chapter.

Historical: Laws 1903, 74, Sec. 5.

Officers: Election, Bond and Duties.

Sec. 2910. Immediately after their election the directors must organize by electing a president and a vice president, who shall be of their number, a secretary and a treasurer. They shall perform the duties enjoined upon them by law and by the by-laws of the corporation. Such officers shall receive such compensation and give such bonds as the by-laws provide or the board of directors determine. The board of directors shall have power, by two-thirds vote, to remove any officer for just cause. They shall also fill any vacancies that may occur from any cause.

Historical: Laws 1903, 74, Sec. 6.

Agents and Employees.

Sec. 2911. The directors of such company may appoint agents, clerks, adjusters and other employes, allowing them such compensation and exacting from them such bonds as the directors may deem proper. The board of directors may appoint an executive committee to whom they may delegate the minor powers and authority vested in such board.

Historical: Laws 1903, 74, Sec. 7.

By-Laws.

Sec. 2912. The members of such company or the board of directors, as may be provided in the articles of incorporation, shall make such by-laws not inconsistent with this chapter as they deem neces-

sary for the management of such company. All amendments of the by-laws shall be furnished to the members in such manner, form and time as the by-laws shall provide.

Historical: Laws 1903, 74, Sec. 8.

Collection of Assessments: Action Against Company.

Sec. 2913. If any member of such company, for a space of thirty days after the written or printed notice of assessments has been mailed to him or her, postpaid, and directed to the postoffice as stated in the application for insurance, or as the same may have been thereafter changed to and recorded with the company, shall neglect to pay the sum assessed, such company may sue for and recover such amount and costs. Suits at law may be brought against such company by a member or members thereof for loss sustained if payment is withheld after such loss becomes due. The officer or officers of such company who shall wilfully neglect or refuse to perform the duties imposed upon them by the provisions of this chapter, shall be liable in their individual capacity to the persons sustaining such loss.

Historical: Laws 1903, 74, Sec. 9.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Admission of Foreign Corporations.

Sec. 2914. It shall be lawful for such companies to insure property only within this State until such time as such company shall have at least five million dollars at risk, and then the board of directors may determine in what State or States, other than the State of Idaho, it shall do business and apply for admittance to such other State or States. Any mutual co-operative insurance company organized under the law of any other State similar in form and in substance to this chapter, may be admitted to do business in this State by the insurance department of the State, upon making a showing that it is legally incorporated under the laws of its own State, and has complied with the conditions of such laws, and has at least five million dollars of insurance in force, and the proper insurance commissioner of such State shall certify that he believes such company solvent, doing a good business, officered by men of integrity and standing, and that it is entitled to the confidence of the public, and upon such company procuring a request and application for membership of one hundred persons, citizens of this State having property that they desire to have insured, and paying a fee of twenty-five dollars to the Insurance Commissioners of this State: *Provided, always,* That the insurance commissioner and the laws of the State where such company applying for admission is domiciled, shall grant to the mutual co-operative companies of this State, organized under this or similar laws, like rights and privileges under in substance the same rules and restrictions.

Historical: Laws 1903, 74, Sec. 10.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Policies: Amounts and How Issued.

Sec. 2915. Such companies may issue policies on all kind of in-

surable real and personal property as herein provided against loss or damage by fire, lightning, tornado, cyclone and windstorm, and the fidelity of persons, for any length of time as may be determined upon by such company in its by-laws. It shall not issue policies on any one risk or hazard to exceed one thousand dollars until there is three hundred thousand dollars insurance in force, when policies of two thousand dollars may be issued; or issue policies for more than two thousand dollars on any one risk until there is one million dollars insurance in force, when policies of three thousand dollars may be issued; or issue policies for more than three thousand dollars on any one risk until there is two million dollars insurance in force, when policies may be issued in the discretion of the company: *Provided*, No real property shall be insured for more than three-fourths its value. Should the amount of insurance decrease below any of the figures above enumerated, the amount of the policy must be correspondingly reduced upon its renewal or within three months from the time that the amount of insurance falls below the foregoing figures. All policies shall be signed by the president and secretary, and each policy holder shall be furnished with the by-laws of the company. Should the amount of insurance of any company created under this chapter decrease below one hundred thousand dollars, the president of such company shall at once call a meeting of the members to consider the matter of disorganizing.

Historical: Laws 1903, 74, Sec. 11.

Assessments: How Made.

Sec. 2916. All assessments shall be determined by proper classification and rating of the property insured, so that each member will be assessed according to the greater or less risk of the property insured to the hazard insured against. An assessment may be made on the members, due and payable within thirty days thereafter, to enable the company to provide for losses and expenses necessary in the conducting of its business, whenever the board of directors so determine. No assessment shall be made on a member for liabilities incurred prior to his or her membership. Any member may be excluded from the benefits of insurance during all the time in which he or she may be in default of payment of an assessment, and the acceptance of such assessment after the same has become delinquent, shall not in any manner make the company liable for any loss or damage that may have occurred during the period that such policy was suspended. Any member shall not be liable directly to any other member for such other member's loss or damage, but the liability of a member shall be solely and exclusively through the channel and process of an assessment, and the amount of such assessment shall be only his pro rata share in proportion to the amount of insurance carried and rate on the same of all losses and expenses, making reasonable allowances and deductions for uncollectible and unpaid assessments.

Historical: Laws 1903, 74, Sec. 12.

Payment of Losses.

Sec. 2917. Losses shall become due and payable in sixty days after

their adjustment. Said adjustment shall be made within sixty days after losses occur.

Historical: Laws 1903, 74, Sec. 13.

Arbitration of Losses.

Sec. 2918. In the event of a dispute between the company and a member respecting whether there has been a loss, and the adjustment of the same, the matter shall, at the request of the company, or such member, be submitted to arbitrators, one of whom shall be selected by the company and one by the member, and such two so chosen shall select a third, all of whom shall be disinterested, and shall take and subscribe an oath to that effect. A decision of a majority shall be final and binding on all parties.

Historical: Laws 1903, 74, Sec. 14.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Withdrawal of Member.

Sec. 2919. Any member of such company may withdraw therefrom at any time by giving the company notice thereof in writing, and paying his or her share of all claims or liabilities for losses or expenses then existing against the company, surrendering his or her policy, and paying such cancellation fee as may be provided, not exceeding one dollar as the board of directors may provide, in case the sum collected at the time the member takes out insurance is such as to justify for a reasonable short rate return premium, and the action of the board of directors in that respect shall be final; but no member, his or her heirs, executors, administrators or assigns can avoid liability to such company for their pro rata share of the unpaid claims against the company accruing while a member. Such company may, for good and sufficient reasons apparent to it, cancel any policy by giving the member notice to that effect and releasing him or her from further assessments, and thereupon such member shall send in his or her policy to the company.

Historical: Laws 1903, 74, Sec. 15.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Powers of Corporations.

Sec. 2920. Such companies shall be deemed bodies corporate with succession, and shall possess the usual powers and privileges, and be subject to the usual duties, of corporations within the limitations of this chapter, and such corporations may purchase, own, hold, lease, encumber and convey such real estate severally or jointly with others as may be necessary for their present and prospective use as offices and place of business.

Historical: Laws 1903, 74, Sec. 16.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Annual Statements.

Sec. 2921. It shall be the duty of the president and secretary to prepare annually, under oath, a full and complete statement of the

condition of the company on the 31st day of December each year, and present the same at the annual meeting of the members.

Historical: Laws 1903, 74, Sec. 17.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Certificate of Authority.

Sec. 2922. It shall be the duty of such company to file an annual statement with the proper insurance department of this State not later than the 31st day of January of each year, on a blank furnished by said insurance department. Such department, if it thinks necessary, or one deputized by it, having no interest in an insurance company and unprejudiced, may make an examination into the affairs of such company, and for such purposes shall have access to all the books and files of the company, and may examine the officers and other witnesses under oath. If such company is doing business in accordance with and under the provisions of this chapter, and is solvent and properly managed, the insurance department shall furnish such company and its authorized agents a certificate stating that such company has complied with the provisions of this chapter, and is authorized to do business for the ensuing year unless such certificate is sooner revoked. If, upon such examination, it shall appear to the department that the condition of such company does not justify it continuing in business, it must apply to the District Court of the county where the principal office of such company is located, for an order requiring such company to show cause why it should not be closed. For examining the company's annual report and issuing certificate it shall be paid \$..... and for each agent's certificate \$.....

Historical: Laws 1903, 74, Sec. 18.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Unauthorized Transaction of Business.

Sec. 2923. It shall not be lawful for such company or agent to do business without authority given them by the insurance department. Any person who shall act or attempt to act for or on behalf of any such company in any capacity as agent, officer or otherwise, in the procuring or attempting to procure or solicit business without said company having first complied with the provisions of this chapter (except soliciting the original signatures to the articles of incorporation and applications for membership necessary to organize a company), shall, on conviction thereof, be found guilty of a misdemeanor, and be fined in any sum not exceeding five hundred dollars or committed to the county jail not exceeding six months, or punished by both such fine and imprisonment.

Historical: Laws 1903, 74, Sec. 19.

Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

Acceptance of Chapter.

Sec. 2924. Any mutual insurance company now doing business in this State under any of the provisions of the law thereof, with the written consent of a majority of the members, may accept the con-

ditions of this chapter and thereupon be governed by it. Before such company shall be entitled to the benefits of this chapter, it shall file with the insurance department its articles of incorporation and by-laws and record a certified copy thereof as provided in Section 2906.

Historical: Laws 1903, 74, Sec. 20.
Cited: Idaho Mut. etc. Ins. Co. v. Myer (1904) 10 Ida. 294; 77 Pac. 628.

CHAPTER 10.

LIVESTOCK INSURANCE COMPANIES.

Section	Section
2925. Incorporation: Articles and by-laws.	2932. Fees payable to Commissioner.
2926. Amount of insurance to be subscribed.	2933. Levy of assessments.
2927. Limit on valuation of property.	2934. Reserve fund and investment of same.
2928. Withdrawal of members.	2935. Compliance by existing corporations.
2929. Annual meeting.	2936. Corporation may join association.
2930. Annual report to Insurance Commissioner.	2937. Foreign corporations.
2931. Investigation and revocation of license.	

Incorporation: Articles and By-Laws.

Sec. 2925. Any ten or more persons, residents of this State, who may desire to form a company or association for the purpose of mutual protection of the members thereof against loss of livestock by death from disease, lightning, tornadoes, cyclones, accidents and every other casual or accidental cause, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file one of such articles in the office of the recorder of the county in which the principal place of business of the company is intended to be located, a second in the office of the Secretary of State, and retain the third in the possession of the company. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the time of its existence, not to exceed fifty years, the number of trustees, and their names, who shall manage the affairs of the company for such length of time, not less than two or more than six months, as may be designated in said articles, and the name of the city, or town and county, in which the principal place of business of the company is to be located. Upon the filing of said articles with the Insurance Commissioner of this State, together with a statement certified under the oath of the president and secretary showing the amount of insurance and number of risks pledged upon its books, and that it has otherwise complied with the provisions of this chapter, the Insurance Commissioner shall grant such company or association a certificate of authority to do business. Amendments may be made to the articles of incorporation by supplemental articles executed and filed the same as the original articles. Trustees of any such company shall adopt such by-laws as they may deem proper for the government of its affairs, and said by-laws shall also provide for the liability of its members for the payment of losses and expenses: *Pro-*

vided, That such liability shall not be less than a sum equal to one annual premium or more than a sum equal to five times the amount of one annual premium, and such liability, when so determined by the by-laws, shall be the entire liability of each member.

Historical: Laws 1905, 150, Sec. 1.
"Recorder" inserted for "auditor",
line 8, to conform to other corporation
laws.

Comparative Legislation: See Wash-
ington: Laws 1905, 66, Sec. 1.

Amount of Insurance to Be Subscribed.

Sec. 2926. No policy of insurance shall be issued by such company or association until no less than two hundred thousand dollars of insurance has been subscribed and entered upon its books.

Historical: Laws 1905, 150, Sec. 2.

Comparative Legislation: See Wash-
ington: Laws 1905, 67, Sec. 2.

Limit on Valuation of Property.

Sec. 2927. No policy of insurance shall be issued for more than three-fourths of the estimated cost value of the property insured.

Historical: Laws 1905, 150, Sec. 3.

Comparative Legislation: See Wash-
ington: Laws 1905, 67, Sec. 3.

Withdrawal of Members.

Sec. 2928. Any member of such company or association may withdraw and be released from all liability as a member, by surrendering his policy of insurance in such company or association, and by giving five days' notice in writing of his intention to withdraw, and paying all obligations, dues and assessments due or pending at the time of his withdrawal; but the liability of members for their pro rata shares of the losses of such company or association shall not cease until the foregoing conditions have been complied with.

Historical: Laws 1905, 150, Sec. 4.

Comparative Legislation: See Wash-
ington: Laws 1905, 67, Sec. 4.

Annual Meeting.

Sec. 2929. Every company or association organized or operating under the provisions of this chapter, shall hold an annual meeting of its members, at which each member shall be entitled to vote on the election of trustees.

Historical: Laws 1905, 150, Sec. 5.

Comparative Legislation: See Wash-
ington: Laws 1905, 67, Sec. 5.

Annual Report to Insurance Commissioner.

Sec. 2930. It shall be the duty of the president and secretary of such company or association doing business under the provisions of this chapter, on or before the 15th day of January of each year, to prepare and file in the office of the Insurance Commissioner of this State a statement, certified under the oath of the said president and secretary, exhibiting the following facts to them:

First. The amount of property at risk on the 31st day of Decem-

ber next preceding the day of the report; the amount of risks added during the previous year; the amount of risks cancelled, withdrawn or terminated during the year, and the largest amount of insurance carried on any single risk.

Second. The amount of cash received with applications, whether paid to agents or officers for insurance during the year; the amount received from assessments during the year; the amount received from all other sources, and the total income.

Third. The amount paid for losses during the year; the amount paid officers and trustees; the amount paid office help; the amount paid agents; the amounts of all other expenditures and the total expenditures.

Fourth. The total amount of cash on hand; the amount and nature of all other assets, and the total assets.

Fifth. The amount of losses reported during the year and unpaid; the amount and nature of all other liabilities, and the total liabilities.

No such company or association shall use or exhibit for advertising purposes any other financial statement, that the one referred to in this section, or a copy thereof.

Historical: Laws 1905, 150, Sec. 6.

Comparative Legislation: See Washington: Laws 1905, 67, Sec. 6.

Investigation and Revocation of License.

Sec. 2931. When it shall appear to the Insurance Commissioner, from its annual report, or otherwise, that the solvency of any mutual company or association doing business under this chapter is impaired, or that the provisions of this chapter are being violated, he shall immediately make examination of such company or association, and for that purpose he shall have access to all books or papers of the company or association, and shall have power to administer oaths and to examine the various officers thereof as to all matters pertaining to the business of such company or association, and also such other witnesses as may be material or important. If the unpaid losses of the company shall amount to twenty-five cents on each one hundred dollars of insurance actually in force, or if the laws of the State are being violated by the company or association, the Commissioner shall order the laws complied with, and all losses to be paid within sixty days. If such company or association shall fail to comply with such requirements within sixty days, the Commissioner shall revoke its license to do business until all liabilities shall have been paid in full, and the laws are complied with in all respects. Whenever the Commissioner shall make an examination as provided for in this section, he shall make a written report of such examination, together with a sworn statement of the expense of such examination, which amount and no more shall be collected from such examined company or association, and file the same in his office. Should any company or association issue a policy of insurance without a license from the insurance department of this State, or after the license of such company or association has been suspended or revoked, it shall be liable for a penalty of one hundred dollars for each offense: *Provided, however,* That the Insurance Commissioner shall have no power or authority to refuse a livestock insurance company or association a license to do business in this

State, if such company or association is solvent and has fully complied with the laws of this State: *Provided further*, That such Insurance Commissioner shall have no authority to revoke or suspend the license of any association or corporation transacting the business of a mutual livestock insurance, if such association or corporation is solvent, and complies with the provisions of this chapter.

Historical: Laws 1905, 150, Sec. 7.

Comparative Legislation: See Washington: Laws 1905, 68, Sec. 7.

Fees Payable to Commissioner.

Sec. 2932. Each insurance company or association doing business under this chapter shall pay to the Insurance Commissioner:

For filing articles of incorporation, ten dollars.

For annual license to do business in this State, ten dollars.

For filing each annual statement, ten dollars.

For annual license of each agent or solicitor of such company, two dollars.

Historical: Laws 1905, 150, Sec. 8.

Comparative Legislation: See Washington: Laws 1905, 69, Sec. 8.

Levy of Assessments.

Sec. 2933. All assessments levied shall be at the rate of fifteen per cent of the amount of annual premiums charged by stock insurance companies as set forth in rate book number four of the issues of 1900, or the special rate books used by said companies: *Provided*, Any association or company operating under the provisions of this chapter may, in the discretion of the trustees, accept cash premiums for the term of the policy, or premiums payable in installments evidenced by promissory notes in lieu of assessments levied upon its members.

Historical: Laws 1905, 150, Sec. 9.

Comparative Legislation: See Washington: Laws 1905, 69, Sec. 9.

Reserve Fund and Investment of Same.

Sec. 2934. Any such association may create a reserve fund for the benefit of its members and invest the same in State, county, school or city bonds or warrants, in the State of Idaho, or may loan the same on real estate, such loans in no case to exceed fifty per cent of the assessed valuation of such real estate, and the interest thus earned, when not used on account of the operating expenses of the association, shall be added to and become a part of such reserve fund.

Historical: Laws 1905, 150, Sec. 10.

Comparative Legislation: See Washington: Laws 1905, 69, Sec. 10.

Compliance by Existing Corporations.

Sec. 2935. Any association heretofore organized in whole or in part in accordance with the provisions of this chapter shall, upon compliance with all of the provisions of this chapter that shall not have been heretofore complied with, be authorized to do business

under this chapter to the same extent and in the same manner as though hereafter organized.

Historical: Laws 1905, 150, Sec. 11.
Comparative Legislation: See Wash-
ington: Laws 1905, 69, Sec. 11.

Corporation May Join Association.

Sec. 2936. The term “persons,” as used in this chapter, shall be held to include corporations, and any such corporation may become a member of any association or corporation organized under this chapter.

Historical: Laws 1905, 150, Sec. 12.
Comparative Legislation: See Wash-
ington: Laws 1905, 69, Sec. 12.

Foreign Corporations.

Sec. 2937. Any corporation authorized by the laws of any other State to do the kind of business hereby authorized, may engage in business in this State upon compliance with the provisions of law authorizing foreign corporations of like character to do business in this State.

Historical: Laws 1905, 150, Sec. 13.

CHAPTER 11.

SURETY AND FIDELITY COMPANIES.

Article	Article
1. Provisions applicable to both sure- ty and fidelity companies.	2. General surety companies. 3. Fidelity companies.

ARTICLE 1.

PROVISIONS APPLICABLE TO BOTH SURETY AND FIDELITY COMPANIES.

Section	Section
2938. Application of article.	2942. Filing and license fees.
2939. Conditions precedent to doing business.	2943. Notice to county recorders.
2940. Certificate of authority.	2944. Failure to pay judgment for- feits authority.
2941. Reimbursement for premium paid by officers.	

Application of Article.

Sec. 2938. This article shall apply to all surety companies doing business in this State, whether organized for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of persons in private offices, employment or positions of trust, and contracts, or for acting as surety on any such bonds, or whether acting as surety on bonds as provided in Section 2947.

Historical: Laws 1905, 394, Sec. 3. This article embraces the whole of the 1905 law, which specifically amended laws 1899, 337, but, as in- dicated by the foregoing section, ap- plied equally to Laws 1899, 187. The object of the 1905 law was to bring both forms of surety companies under	the same rules as to qualifications, and to subject both to the jurisdiction of the Insurance Commissioner. Article 2 of this chapter includes the remain- ing sections of the general surety com- pany law (1899, 337) while Article 3 includes the sections which are left of the fidelity insurance law (1899,
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187). The sections of the latter law omitted from Article 3 are inconsistent with, or covered by, the provi-

sions of this article, and are therefore, by the terms of this section, superseded.

Conditions Precedent to Doing Business.

Sec. 2939. Every such company must be authorized under the laws of the State where incorporated, and under its charter or articles of incorporation, to become surety upon such bond, undertaking, obligation, recognizance or guaranty; must have a fully paid-up and safely invested and unimpaired capital of at least two hundred and fifty thousand dollars; must have good available assets exceeding its liabilities, which liabilities for the purpose of this chapter shall be taken to be its capital stock, its outstanding debts, and a premium reserve at the rate of fifty per centum of the current annual premiums on such outstanding bonds, undertakings, recognizances and obligations of like character in force.

Such company must, before beginning to do business in this State, file with the Secretary of State a certified copy of its charter or articles of incorporation, and must also designate an agent resident within this State upon whom process may be served, in compliance with the statutes of this State relating to foreign corporations doing business within this State. Such company shall, at the time of filing its charter or articles or incorporation with the Secretary of State, make application, in writing to the State Insurance Commissioner, to be authorized to do business in this State under this chapter, and shall pay the fee hereinafter provided and shall, at the time of such application, and also, on or before the 30th day of April of each year, file with the State Insurance Commissioner a statement, verified under oath, made up to December 31st preceding, stating the amount of its paid-up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings, recognizances and obligations of like character in force upon which it is surety, the amount of liability for unearned portions thereof estimated at the rate of fifty per centum of the current annual premiums on each such bond, undertaking, recognizance and obligation in force and stating the amount of its outstanding obligations of all kinds.

Such company, if it be organized under the laws of any other State shall, before any certificate of authority to do business in this State shall issue, deposit with the Treasurer of this State, money, bonds or other securities to be approved by the Insurance Commissioner, to the actual value of not less than twenty-five thousand dollars. Said money, bonds or other securities so deposited, shall be for the benefit of the holders of the obligations of such company, to remain with said Treasurer in trust to answer any default of said company as surety upon any such obligation, established by final judgment, upon which execution may lawfully be issued against said company, such company, however, at all times to have the right to collect the interest, dividends and profits upon such securities, and from time to time to withdraw such securities or portions thereof, substituting therefor others of equally good character and value, to the satisfaction of said Commissioner, and such securities shall not be sold under any process against such company until after forty days notice to said company specifying the date, place and manner of such sale,

and the process under which and the purposes for which it is to be made, accompanied by a copy of such process. The State of Idaho shall be held responsible for the safety of all deposits made under the provisions of this section. Such company shall not be permitted to withdraw from the State Treasurer such deposit of moneys, bonds or other securities, for a period of one year after discontinuing business within this State, or while any suit is pending or any judgment against said company in this State shall remain unpaid. Said deposit shall at all times be maintained at said sum of twenty-five thousand dollars or more, and for a failure, for a period of forty days after notice by the Insurance Commissioner, given by registered letter addressed to the president of said company at its home office, to replenish and so maintain the same, the authority of said company to do business in this State shall be revoked by the Insurance Commissioner.

Historical: Laws 1899, 337, Sec. 2; amended Laws 1905, 394, Sec. 1. Omitting the provision requiring surety companies doing business in the State

at the time of the passage of the act to deposit securities on or before April 30, 1905, such provision being now obsolete.

Certificate of Authority.

Sec. 2940. The State Insurance Commissioner, upon due proof that such company possesses the qualifications specified in this article, and that it has in all things complied with the laws of this State relating to surety companies or applicable thereto, shall issue to such company a certificate authorizing said company to do business until and including April 30th, thence next ensuing, and thereafter such certificate shall issue on April 30th as hereinbefore provided, for a period of one year. Said certificate shall be evidence of the authority of such company to do business in this State, and to become and to be accepted as sole surety on all private bonds and contracts, and on all bonds, undertakings, recognizances and obligations required or permitted by law, of the charter, ordinances, rules or regulations of any municipality, board, body, organization or public officer and of the solvency and credit of such company for all authorized purposes and its sufficiency as such surety.

Historical: Laws 1899, 337, Sec. 3; amended Laws 1905, 394, Sec. 1, first

part of section. The last part comprises the following section.

Reimbursement for Premiums Paid by Officers.

Sec. 2941. Any judge, court or officer, whose duty it is to pass upon the account of any assignee, trustee, receiver, guardian, executor, administrator or other fiduciary required by law to give bond or undertaking as such, and whenever such assignee, receiver, trustee, guardian, executor, administrator or other fiduciary, has given bond or undertaking with a surety company or companies as surety or sureties thereon, as herein provided, shall allow, in the settlement of the account of such assignee, receiver, trustee, guardian, executor, administrator or other fiduciary a reasonable premium subject to the limitations hereinafter provided, paid to any such company or companies for becoming his surety on such bond or undertaking. In all other cases, where, by the provisions of this chapter a corporate surety or guarantor is given or required, except notaries public, the premium to be paid to any such company or companies for becoming

such surety or guarantor shall be paid out of the general funds of the divisions of government by or for which the person giving such bond or undertaking was appointed or elected: *Provided, however,* that the premium shall in no case exceed in the aggregate one-half of one per cent per annum on the amount of such bond or undertaking: *Provided, also,* That such company or companies have complied, and shall continue to comply, with the laws of this State relative to such companies.

Historical: Laws 1899, 337, Sec. 3; | part of section; the first part comprises the preceding section.
amended Laws 394, 1905, Sec. 1. Last

Filing and License Fees.

Sec. 2942. All surety companies doing business in this State shall pay fifty dollars to the State Insurance Commissioner at the time of filing their articles of incorporation with the Secretary of State, and shall take a receipt therefor, in duplicate, and file such duplicate with the Secretary of State. Such companies shall likewise pay to the Insurance Commissioner, annually in advance, a license fee of fifty dollars, on or before April 30th of each year, and no certificate of authority to do business for such year shall be issued unless such annual fee be paid. License money so collected shall be paid by the Insurance Commissioner to the State Treasurer, and a receipt therefor taken, in duplicate, one to be filed with the State Auditor, and the other preserved in the office of such Insurance Commissioner. All moneys so paid shall be placed to the credit of the general fund.

Historical: Laws 1899, 337, Sec. 8;
amended Laws 1905, 394, Sec. 1.

Notice to County Recorders.

Sec. 2943. Whenever any surety company, not organized under the laws of the State of Idaho, shall have complied with the laws of this State as in this chapter and as otherwise by law provided, it shall be the duty of the Insurance Commissioner of this State, on the first day of the next succeeding month, to send to the county recorder of each county in this State, a notice, stating that such surety company has complied with the laws of this State, and is authorized to write risks of the kind and character authorized in its certificate of authority, to do business, stating therein in general terms, the risks authorized to be written by such company. Such notice shall be issued by said Insurance Commissioner over his signature and seal of office, and shall be received in evidence as a sufficient justification of such surety, and of its authority to do business in this State until the end of the insurance year in which the same may have been issued, or until notice be given of withdrawal from, or of cancellation of its license to do business in, this State. Such certificate shall be kept on file in the office of the county recorders of the respective counties, subject to inspection as other public records, and any party interested may have certified copies thereof which shall be admissible in evidence with like effect as the original. If any company shall withdraw from this State, or if its license be cancelled, the Insurance Commissioner shall give notice of such withdrawal from the State or cancellation of license to do business, forthwith, by mailing a certificate

of such fact to the county recorder of each county of the State, and also by sending notice to each agent resident within the State authorized to do business for said company, as shown by the records of his office, at the address shown in his said records. The certificates of authority to be sent monthly as in this section provided, shall include in one certificate all companies which have been authorized to do business during the preceding month, and may also include all companies which have withdrawn, or whose certificate of authority may have been cancelled during such month, and, unless deemed for the public interest that notice be given forthwith, all notices of withdrawal from the State, and also all notices of cancellation of licenses to do business, may be made part of such monthly certified statement, and copies thereof sent to agents of such company, and county recorders at the first of the month only in lieu of sending such notice forthwith. This section shall not be held to require notice of cancellation of an agent's authority to do business, except only in cases of withdrawal from the State, and cancellation of license as herein mentioned.

Historical: Laws 1899, 337, Sec. 9;
amended Laws 1905, 394, Sec. 1.

Failure to Pay Judgment Forfeits Authority.

Sec. 2944. If any surety company doing business under this chapter shall neglect or refuse, for a period of ninety days, to pay any final judgment rendered against it upon any bond or undertaking made or guaranteed by it under the provisions of this chapter, it shall forfeit all right to do business in this State and its certificate of authority shall be revoked: *Provided*, If any appeal from said judgment shall be taken within said ninety days, accompanied by an undertaking as is provided in cases of appeals under the general statutes of this State, then and in that case such period of ninety days shall begin to run from the date of the remittitur from the Supreme Court affirming said judgment in whole or in part, shall be filed in the District Court.

Historical: Laws 1899, 337, Sec. 12;
amended Laws 1905, 394, Sec. 1.

ARTICLE 2.

GENERAL SURETY COMPANIES.

Section	Section
2945. Bonds may be executed by surety companies.	2948. Expense of bond as costs.
2946. Release of surety.	2949. Companies must comply with acts of Congress.
2947. Agreement for protection of surety.	2950. Company estopped to plead ultra vires.

Bonds May Be Executed by Surety Companies.

Sec. 2945. Whenever any bond, undertaking, recognizance or other obligation is by law, or by the charter, ordinances, rules or regulations of any municipality, board, body, organization, court, judge or public officer required or permitted to be made given, tendered or filed with surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance

or guaranty may be executed by a surety company qualified as in this chapter provided. Such execution by such company of such bond, undertaking, obligation, recognizance or guaranty, shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule or regulation that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one surety or by one or more sureties, or that such sureties shall be residents or householders, or free holders, or either or both, or possess any other qualification. All courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character, shall accept and treat such bond, undertaking, obligation, recognizance or guaranty, when so executed by such company, as conforming to, and fully and completely complying with, every such requirement of every such law, charter, ordinance, rule or regulation.

Historical: Laws 1899, 337, Sec. 1. "In this chapter" inserted in place of "hereinafter" provided, at end of first sentence. The provisions of the preceding article supersede the provisions of the 1899 act as to qualifications of corporate sureties.

Cited: *Gatward v. Wheeler* (1904) 10 Ida. 66; 77 Pac. 23.

Justification of Company Sureties: When an undertaking on appeal from a justice court is excepted to, the appellant may, in lieu of a justification of sureties, file the undertaking of a surety company, but such undertaking

must be accompanied with documentary evidence showing prima facie that such surety company has qualified to do business in this State by complying with the requirements of this act, and that the execution of such undertaking has been authorized by the surety company, executed by agents or officers authorized to execute it, and notice of filing such undertaking and evidence must be given the respondent. *Numbers v. Rocky Mt. Bell Tel. Co.* (1900) 7 Ida. 408; 63 Pac. 381.

Release of Surety.

Sec. 2946. The surety or the representative of any surety, upon the bond of any trustee, committee, guardian, assignee, receiver, executor, or administrator, or other fiduciary, may apply by petition to the court wherein such bond is directed to be filed or which may have jurisdiction of such trustee, committee, guardian, assignee, receiver, executor or administrator, praying to be relieved from further liability as such surety, for the acts or omissions of the trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, which may occur after the date of the order relieving such surety to be granted as herein provided for, and to require such trustee, committee, guardian, assignee, receiver, executor, or administrator, or other fiduciary, to show cause why he should not account and said surety be relieved from such further liability as aforesaid and said principal be required to give a new bond. Thereupon, upon filing of said petition, said court shall issue such order returnable at such time and place and to be served in such manner as said court shall direct, and may restrain such trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary from acting except in such manner as it may direct to preserve the trust estate. Upon the return of such order to show cause, if the principal in the bond account in due form of law and file a new bond duly approved, then said court must make an order releasing said surety filing the petition as aforesaid, from liability upon the bond for any subsequent act or default of the principal. In default of said principal thus accounting and filing such new bond, said Court

shall make an order directing such trustee, committee, guardian, assignee, receiver, executor, or administrator, or fiduciary to account in due form of law within thirty days, and that if the trust fund or estate shall be found or made good and paid over or properly secured, such surety shall be discharged from any and all further liability as such for the subsequent acts or omissions of the trustee, committee, guardian, assignee, receiver, executor, or administrator, or fiduciary, after the date of the surety being so relieved or discharged, and discharging such trustee, committee, guardian, assignee, receiver, executor or administrator, or fiduciary.

Historical: Laws 1899, 337, Sec. 4.

Agreement for Protection of Surety.

Sec. 2947. It shall be lawful for any party of whom a bond, undertaking, or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which such surety or sureties are or may be held responsible, with a bank, savings bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, or a judge thereof, if such deposit is otherwise proper, for the safe keeping thereof, and in such manner as to prevent the withdrawal of such moneys and assets or any part thereof, without the written consent of such surety or sureties or an order of the court, or a judge thereof, made on such notice to such surety or sureties as such court or judge may direct.

Historical: Laws 1899, 337, Sec. 5.

Expense of Bond as Costs.

Sec. 2948. Any receiver, assignee, guardian, trustee, committee, executor, administrator or curator, or other fiduciary, required by law or the order of any court or judge to give a bond or other obligation as such, may include as a part of the lawful expense of executing his trust, such reasonable sum paid a company authorized under the laws of this State so to do, for becoming his surety on such bond as may be allowed by the court in which, or a judge before whom, he is required to account, not exceeding one per centum per annum on the amount of such bond. In all actions and proceedings a party entitled to recover disbursements therein shall be allowed and may tax and recover such sum paid such company for executing any bond, recognizance, undertaking, stipulation or other obligation therein, not exceeding, however, one per cent on the amount of the liability upon such bond, recognizance, undertaking, stipulation, or other obligation during each year the same has been in force.

Historical: Laws 1899, 337, Sec. 6.

Companies Must Comply With Acts of Congress.

Sec. 2949. Such surety companies only as have complied with the provisions of sections two, three, four and five of the act of Congress, approved August 13th, 1894, entitled: "An act relative to recognizances, stipulations, bonds, and undertakings and to allow certain corporations to be accepted as surety thereon" shall be permitted to

do business in this State, and no certificate under Section 2940 shall issue, until a compliance with the provisions of said sections of said act of Congress is shown. And said surety companies must also file with the annual statement prescribed by Section 2939 evidence that their authority to do business has not been revoked under the provisions of said act of Congress.

Historical: Laws 1899, 337, Sec. 7. The act of Congress referred to in the section may be found in U. S. Comp. St. (1901) Vol. 2, p. 2315. The sections indicated require the appointment of resident agents for service of process; the deposit of a copy of charter and statement of assets and

liabilities with the Attorney General of the United States, who shall issue a certificate of authority; the subsequent filing of quarterly statements with the Attorney General, and fix the federal jurisdiction of suits against the company.

Surety Company Estopped to Plead Ultra Vires.

Sec. 2950. Any company giving any bond or recognizance under this article shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability.

Historical: Laws 1899, 337, Sec. 11.

ARTICLE 3.

FIDELITY COMPANIES.

Section

- 2951. Companies subject to article.
- 2952. Persons deemed agents of companies.
- 2953. Acting for unauthorized company: Penalty.
- 2954. Acceptance of unauthorized company as surety: Penalty.
- 2955. Refusal to grant bond: Statement of reasons.
- 2956. Same: Revocation of authority for non-compliance.

Section

- 2957. Corporations charged with a public use.
- 2958. Cost of bond not to be deducted from wages.
- 2959. Applicant to be furnished with copy of bond.
- 2960. Application of article to individuals.

Companies Subject to Article.

Sec. 2951. Any corporation organized or controlled under the laws of this State, or of any State or Territory within the United States of America, or of any municipality of such State or Territory, or of any foreign government, sovereignty or municipality, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of persons in private office, employments or positions of trust and contracts, or for acting as surety on any such bonds, are subject to the provisions hereinafter contained.

Historical: Laws 1899, 187, Sec. 1; re-enacting Laws 1893, 36, Sec. 1; "And subject to the provisions hereinafter contained" inserted for "shall file with the Secretary of State a certified copy of its articles", etc., which

is superseded by Laws 1905, 394. See Art. 1 of this chapter and the note to Sec. 2938. This section is otherwise retained in order to identify the companies subject to this article.

Persons Deemed Agents of Companies.

Sec. 2952. Any person who solicits business for or in behalf of such corporation, or makes or transmits for any person other than himself, any application for a guaranty, or security, or who adver-

tises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a contract of guaranty of security, or who shall examine or investigate the character of any applicant for a guaranty or security, for any person or persons other than himself, or who shall refer any applicant for a guaranty or security to such corporation, whether any of said acts shall be done at the instance or request, or by the employment of such corporation or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed directly or indirectly by any corporation, shall be held to be the agent of the corporation, so far as relates to all the liabilities and penalties prescribed by this article.

Historical: Laws 1899, 187, Sec. 8;
re-enacting Laws 1893, 86, Sec. 8.

Acting for Unauthorized Company: Penalty.

Sec. 2953. Any person performing any of the acts or things mentioned in the preceding section for any such corporation without said corporation having first complied with the provisions of this chapter, and having received the certificate of authority from the Insurance Commissioner, as provided in Section 2940, shall be deemed guilty of a misdemeanor, and for conviction thereof for the first offense shall be fined in any sum not less than one thousand dollars, and not more than two thousand dollars, and imprisoned in the county jail for a period of three months, and for each subsequent offense, such person shall be fined in any sum not less than two thousand dollars, and confined in the county jail for a period of six months.

Historical: Laws 1899, 187, Sec. 9;
re-enacting Laws 1893, 86, Sec. 9.
"Insurance Commissioner" inserted
for "Secretary of State" to conform

to Laws 1905, 394, Sec. 1 (See Sec. 2940), which supersedes Sec. 7 of the act referred to in the section from which this section is taken.

Acceptance of Unauthorized Company as Surety: Penalty.

Sec. 2954. Any persons or association of persons, or corporation, who shall accept any corporation created for the purposes, or either of them, mentioned in Section 2951, without such corporation having previously complied with the provisions and requirements of this chapter, and having received from the Insurance Commissioner the certificate of authority provided for in Section 2940, shall forfeit as a penalty the sum of one thousand dollars, to be recovered by suit in the name of the State in any court of competent jurisdiction.

Historical: Laws 1899, 187, Sec. 10;
re-enacting Laws 1893, 86, Sec. 10.
"Insurance Commissioner" inserted

for "Secretary of State". See note to preceding section.

Refusal to Grant Bond: Statement of Reasons.

Sec. 2955. When any such corporation shall cancel or refuse to grant a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed, or to be guaranteed, that said corporation will no longer guarantee or be security or become guaranty of security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall

furnish such person a full statement in writing, of the facts upon which the action of the corporation is based, and if such action be based in whole, or in part, on information, all such information together with the name or names of the informants with their places of residence. Such corporation failing or refusing to furnish such written statement within thirty days after a request therefor, shall be liable to the person injured in the sum of one thousand dollars, in addition to all other damages caused thereby, which may be sued for and recovered in any court of competent jurisdiction.

Historical: Laws 1899, 187, Sec. 11;
re-enacting Laws 1893, 86, Sec. 11.

Same: Revocation of Authority for Non-Compliance.

Sec. 2956. If any corporation shall fail or refuse to comply with the provisions of the preceding section, the Insurance Commissioner shall revoke the certificate of authority issued to such corporation.

Historical: Laws 1899, 187, Sec. 12;
re-enacting Laws 1893, 86, Sec. 12.
"Insurance Commissioner" for "Sec-

retary of State" to conform to Laws
1905, 394. See note to Sec. 2938.

Corporations Charged With a Public Use.

Sec. 2957. Corporations controlled for the purpose mentioned in Section 2951, are hereby declared to be charged with a public use.

Historical: Laws 1899, 187, Sec. 13;
re-enacting Laws 1893, 86, Sec. 13.

Cost of Bond Not to Be Deducted from Wages.

Sec. 2958. It shall be unlawful for any railroad or other corporation doing business within this State, to collect or retain from the wages of the persons in their employ, the cost of such guaranty or security, and such employees shall be permitted to select such guaranty or surety company or companies or individuals, complying with the provisions of this chapter, and such employees shall be permitted to pay the premiums of their bonds, freely and voluntarily.

Historical: Laws 1899, 187, Sec. 14;
re-enacting Laws 1893, 86, Sec. 14.

Applicant to Be Furnished With Copy of Bond.

Sec. 2959. Any corporation, company or individual complying with the provisions of this chapter, issuing such bonds of indemnity, guaranty, or security, shall furnish the applicant with a true and complete copy of the original bond, furnished the corporation, company or individual to whom the bond was issued.

Historical: Laws 1899, 187, Sec. 15;
re-enacting Laws 1893, 86, Sec. 15.

Application of Article to Individuals.

Sec. 2960. Nothing contained in this article shall be construed to apply to any citizen or person of this State offering or becoming surety, upon bonds or otherwise, for any other citizen or person without compensation to him or herself.

Historical: Laws 1899, 187, Sec. 16;
re enacting Laws 1893, 86, Sec. 16.

CHAPTER 12.

GUARANTY, TITLE AND TRUST COMPANIES.

Section

2961. Powers and rights of companies.

2962. Enlargement of powers of existing corporations.

2963. Capital required.

Section

2964. Capital deemed security.

2965. Executors may deposit securities.

2966. Court may direct deposit.

2967. Court may examine officers.

Powers and Rights of Companies.

Sec. 2961. Companies incorporated under the provisions of this chapter shall have the power and right:

1. To furnish abstracts of title to real estate; to guarantee the title, and to make insurance of every kind pertaining to or connected with titles to real estate, and to make, execute and perfect such and so many contracts, agreements, policies and other instruments as may be required therefor;

2. To receive and hold on deposit and in trust and as security estate, real and personal, including the notes, bonds, obligations of estates, individuals, companies and corporations, and the same to purchase, collect, adjust and settle, sell and dispose of, in any manner with or without proceedings in law or equity, and for such price, and on such terms as may be agreed on between them and the parties contracting with them;

3. To act as trustee, assignee, receiver, guardian, executor, administrator, and to take, accept and execute trusts of every description not inconsistent with the laws of this State or of the United States, and the president or secretary of any such company may take the oath necessary to qualify it to act in such capacity, and such company shall be bound thereby; and to receive deposits of money and other personal property and to issue their obligations therefor; to invest their funds in and to purchase real and personal securities, and to loan money on real and personal security;

4. To act as fiscal or transfer agent of any State, municipality, body politic or corporation, and in such capacity to receive and distribute money, transfer, register and countersign certificates of stocks, bonds, or other evidences of indebtedness, and to receive and manage any sinking fund thereof on such terms as may be agreed upon;

5. To take, receive and hold any and all such pieces of real property as may have been or may hereafter be the subject of any insurance made by such companies under the powers conferred by their charter, and the same to grant, bargain, sell, convey and dispose of in any such manner as they see proper;

6. To purchase and sell real estate and take charge of the same.

7. To become security for the payment of all damages that may be assessed and directed to be paid for lands taken in the building of any railway, or for the purposes of any railway, or for the opening of streets or roads or for any purpose whatsoever where land or property is authorized by law to be taken;

8. To become security upon any writ of error or appeal, or in any proceeding instituted in any court in this State, in which security may be required.

Historical: Laws 1901, 26, Sec. 1; amended Laws 1907, 545, Sec. 1. "Chapter" inserted for "act, or the act

of which this is an amendment", in the first paragraph.

Enlargement of Powers of Existing Corporations.

Sec. 2962. Any company heretofore incorporated under the act of which this and the preceding sections are amendments, may exercise any or such portion of the additional powers or privileges granted by the preceding section, as it may desire, by filing with the recorder of the county of its principal place of business, a resolution of its shareholders, certified by its secretary, passed at any regular or special meeting thereof, adopting the provisions of this and the preceding sections, or such portion thereof as it may desire, and filing a copy thereof, certified by such county recorder, with the Secretary of State and the Bank Commissioner.

Historical: Laws 1907, 545, Sec. 2; amending by addition Laws 1901, 26.

Capital Required.

Sec. 2963. Before exercising any of the powers hereby conferred, each such corporation shall have a paid up capital of not less than twenty-five thousand dollars, an affidavit of which fact, made by the treasurer thereof, shall be filed in the office of the Secretary of State, and a copy of such affidavit certified under the seal of the office of the Secretary of State shall be evidence of compliance with the requirements hereof.

Historical: Laws 1901, 26, Sec. 2.

Capital Deemed Security.

Sec. 2964. Whenever such companies shall receive and accept the office or appointment of assignees, receivers, guardians, executors, administrators, or be directed to execute any trust whatever, or engage in the compiling of abstracts, the capital of the said company shall be taken and considered as the security required by the law for the faithful performance of their duties as aforesaid, and shall be absolutely liable in case of any default whatever.

Historical: Laws 1901, 26, Sec. 3.

Executors May Deposit Securities.

Sec. 2965. Any executors, administrator, guardian or trustee, having the custody or control of any bonds, stocks, securities or other valuables belonging to others, shall be authorized to deposit the same for safe keeping with said companies.

Historical: Laws 1901, 26, Sec. 4.

Court May Direct Deposit.

Sec. 2966. Every court into which moneys may be paid by parties, or be brought by order or judgment, may, by order, direct the same to be deposited with any such corporation.

Historical: Laws 1901, 26, Sec. 5.

Court May Examine Officers.

Sec. 2967. Whenever any court shall appoint said companies, assignees, receivers, guardians, executors, administrators, or to exe-

cute any trust whatever, the said court may, in its discretion, examine the officers of said company under oath or affirmation, as to the manner in which its investments are made, and the security afforded to those by or for whom its engagements are held.

Historical: Laws 1901, 26, Sec. 6.

CHAPTER 13.
BANKING CORPORATIONS.

Article	Article
1. Organization, internal management and right to do business.	3. Supervision of banks by the Commissioner.
2. Transaction of banking business.	

ARTICLE 1.

ORGANIZATION, INTERNAL MANAGEMENT AND RIGHT TO DO BUSINESS.

Section	Section
2968. Definition of banks and banking.	2976. Transfer of stock: Purchase by bank.
2969. Persons and corporations subject to chapter.	2977. Stock book.
2970. How incorporated: Capital required.	2978. Ownership of real estate.
2971. Who are prohibited from banking.	2979. Liability of stockholders.
2972. Banks to comply with this chapter.	2980. Directors: Qualifications and oath.
2973. Capital: When to be paid in.	2981. Dividends and surplus.
2974. Same: Sale of delinquent stock.	2982. Foreign bank defined.
2975. When authorized to do business.	2983. Same: Capital required.
	2984. Same: Penalties.

Definition of Banks and Banking.

Sec. 2968. Any person, firm, association, copartnership, company, corporation or foreign bank, (except national banks), having a place of business within this State where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange or promissory notes, or where stocks, bonds, bullion, bills of exchange or promissory notes are received for discount or for sale, shall be regarded as a bank or banker, and as doing a banking business under the provisions of this chapter.

Historical: Laws 1905, 175, Sec. 7.

Persons and Corporations Subject to Chapter.

Sec. 2969. Any individual, firm or partnership, company, corporation or foreign bank, holding itself out to the public as receiving money on deposit, and whether evidenced by certificate, promissory note or otherwise, shall be considered as doing a banking business, and be subject to the provisions of this chapter as to such banking business: *Provided*, That nothing in this chapter shall, in any manner, abridge or affect the powers or privileges granted to trust companies doing a banking business, within the meaning of this chapter,

and organized under and complying with, or which may hereafter organize under and comply with Chapter 12 of this title: *Provided, further*, That the banking department of such trust companies shall be subject to such regulations, examinations and reports, as are required under this chapter, of other corporations doing a banking business.

Historical: Laws 1905, 175, Sec. 30.
"Chapter 12 of this title" inserted for

"the act of the Legislature of the
State of Idaho, entitled", etc.

How Incorporated: Capital Required.

Sec. 2970. Banking corporations may be formed under the general incorporation laws of this State, for the purpose of conducting and carrying on a banking business, and also to establish offices of loan and deposit to be known as savings banks, or to establish banks having departments for both classes of business, upon the terms and conditions and subject to the liabilities prescribed in this chapter. No banking corporation shall have less than five directors, and every such corporation shall, before it transacts any banking business, file with the Bank Commissioner a certified copy of its articles of incorporation. It shall be unlawful for any corporation, partnership, firm or individual, except as hereinafter provided, to transact a banking business, unless such corporation, partnership, firm or individual has property of cash value as follows: In cities, villages and communities having a population of less than two thousand inhabitants, ten thousand dollars; in cities, villages and communities having a population of less than three thousand and more than two thousand, twenty thousand dollars; in cities having a population of less than five thousand and more than three thousand, twenty-five thousand dollars; in cities having a population of less than ten thousand and more than five thousand, thirty thousand dollars; in cities having a population of ten thousand and less than twenty-five thousand, fifty thousand dollars; in cities of over twenty-five thousand population, one hundred thousand dollars. Such property shall be in money, commercial paper, bank furniture, fixtures, or the necessary bank building, including the lot or lots on which the building is situated, which said lot or lots shall be unencumbered.

Historical: Laws 1905, 175, Sec. 8.

Who Are Prohibited from Banking.

Sec. 2971. No individual, firm or corporation shall do a banking business in this State, until he or they shall have furnished to the Bank Commissioner evidence satisfactory to him that such individual, firm or corporation has invested, or has for investment, in such banking business, an amount of capital equal to that required by the preceding section of corporations formed thereunder, and shall have received from such Commissioner a certificate authorizing him or them to do business, as required in Section 2975 for corporations.

Historical: Laws 1905, 175, Sec. 29.
Omitting the clause "not now engaged
in banking in this State" as obsolete

for the reasons stated in the note to
the following section.

Banks to Comply With This Chapter.

Sec. 2972. No person or corporation, except national banks, shall

carry on a banking business, except on compliance with the provisions of this chapter.

Historical: Laws 1905, 175, Sec. 9. Omitting the proviso which has been made an independent section. See Sec. 3009. Omitting further the clause "and banks and trust companies organized in this State established prior to the taking effect of this act". That

clause is now obsolete as Sec. 43 of the act required all pre-existing banks to "conform to, and in all respects comply with, the provisions of this act" within one year after the same should take effect, and the act has now been in effect for over three years.

Capital: When to Be Paid In.

Sec. 2973. At least fifty per cent of the capital of every bank hereafter formed shall be paid in before such bank shall be authorized to commence business, and the remainder of the capital of such bank shall be paid in monthly installments of at least ten per cent each on the whole of the capital, payable at the end of each succeeding month from the time it shall be authorized to commence business, and the payment of each installment shall be certified to the Bank Commissioner, under oath, by the president, cashier or treasurer of each bank: *Provided*, That where an amount is paid in, equal to the requirements prescribed in Section 2970, the subscription for the balance shall be subject to the direction of the stockholders and directors, and the payment of such subscription subject to the directors.

Historical: Laws 1905, 175, Sec. 10.

Same: Sale of Delinquent Stock.

Sec. 2974. When any stockholder, or his assignee, shall fail to pay any installment on his stock when the same is required by the preceding section to be paid, the directors of such bank may sell the delinquent stock of such delinquent stockholder at public sale, having first given the delinquent stockholder twenty days notice, personally or by mail, at his last known address. If no bidder can be found who will pay for such delinquent stock the amount due thereon, with costs incurred, the amount previously paid on such delinquent stock shall be forfeited to the bank, and such stock shall be sold as the directors may order within six months from the time of such forfeiture, and if not sold it shall be cancelled and held as unissued capital stock of the bank. If sold before cancellation, any surplus over the amount due on such stock to said bank, less all costs incurred thereon, with interest for the time delinquent, shall be returned to the original stockholder, his heirs or assigns. If such cancellation shall reduce the paid capital of the bank below the minimum required by law, the said paid capital shall, within thirty days thereafter, be increased to the required amount by original subscription, in default of which a receiver may be applied for by the Bank Commissioner to close up the business of the bank.

Historical: Laws 1905, 175, Sec. 11.

When Authorized to Do Business.

Sec. 2975. When any bank hereafter formed shall notify the Bank Commissioner that at least fifty per cent of its capital has been paid in, the Commissioner shall examine into the condition of such bank, and if, upon examination, it appears that such bank is lawfully entitled to commence business, the Commissioner shall, within thirty days

after receiving such notice, give to such bank a certificate, under his hand and official seal, that it has complied with all the provisions of the law and is duly authorized to transact a banking business: *Provided*, That no bank shall transact any business except such as is necessarily preliminary to its organization, until it has been authorized by the Bank Commissioner to commence the business of banking.

Historical: Laws 1905, 175, Sec. 12.

Transfer of Stock: Purchase by Bank.

Sec. 2976. The shares of stock of such incorporated bank shall be deemed personal property, and shall be transferred on the books of the bank in such manner as the by-laws thereof shall direct. But no such bank shall accept, as collateral, or be the purchaser of, its own capital stock, except in cases where the taking of such collateral, or such purchase, shall be necessary to prevent loss upon a debt previously contracted in good faith, and in such case such stock must be sold by the bank within twelve months from the time it was acquired.

Historical: Laws 1905, 175, Sec. 13.

Stock Book.

Sec. 2977. A book shall be provided and kept by every bank, in which shall be entered the names and residences of the stockholders thereof, the number of shares held by each, the time when such person became a stockholder, and also all transfers of stock, stating the time when made, the number of shares, and by whom transferred. In all actions, suits and proceedings said book shall be prima facie evidence of the facts therein stated.

Historical: Laws 1905, 175, Sec. 14.

Ownership of Real Estate.

Sec. 2978. Any bank under the laws of this State may purchase, hold and convey real estate for the following purposes and no other:

1. Such real estate as shall be necessary for the convenient transaction of its business, including with its banking offices other premises in the same building to rent as a source of income, but which shall not exceed in cost to such bank fifty per cent of its paid-in capital, surplus and undivided profits.

2. Such real estate as shall be purchased by or conveyed to it in satisfaction or on account of debts previously contracted in the course of its business.

3. Such real estate as it shall purchase at sale under judgments, decrees or mortgage foreclosure under securities held by it.

Historical: Laws 1905, 175, Sec. 16.
Omitting "hereafter formed" as obsolete. See note to Sec. 2972.

Liability of Stockholders.

Sec. 2979. The stockholders of every incorporated bank shall be liable to the creditors of such bank to the amount of their stock at the par value thereof, in addition to the stock held by them; but persons holding stock as administrators, executors, guardians or trustees, or as collateral security, or in pledge, shall not be personally liable

as stockholders, but the assets and funds in the hands of such trustee constituting the trust shall be liable to the same extent as the testator or intestate, ward or person interested in such trust fund would be if living or competent to act, and the person pledging such stock shall be deemed a stockholder and liable under this section. Such liability may be enforced by an action at law or suit in equity by any such bank in process of liquidation, or by any receiver or other person succeeding to the legal rights of such bank.

Historical: Laws 1905, 175, Sec. 15.

Directors: Qualifications and Oath.

Sec. 2980. Every director of such incorporated bank must be the owner, in his own right, of stock therein to the amount of at least five hundred dollars par value. He shall take and subscribe an oath that he will faithfully and diligently perform the duties of such office, and will not knowingly violate, or permit to be violated, any provision of this chapter. Such oath shall be transmitted to the Bank Commissioner and filed in his office.

Historical: Laws 1905, 175, Sec. 17.

Dividends and Surplus.

Sec. 2981. The directors of any incorporated bank may declare a dividend of so much of the net profits of the bank after providing for all expenses, interest and taxes accrued or due from such bank, as they shall deem just and expedient; but before any such dividend is declared, not less than one-tenth of the net profits of the bank for the preceding half year, or for such period as is covered by the dividend, shall be carried to a surplus, until such surplus shall amount to twenty per cent of its paid capital.

Historical: Laws 1905, 175, Sec. 18.

Foreign Bank Defined.

Sec. 2982. In construing this chapter the term "foreign bank" and "foreign banker" shall be deemed to include:

1. Every corporation not organized under the laws of the State of Idaho, doing a banking business, except a national bank.

2. Every unincorporated company, partnership or association of two or more individuals organized under or pursuant to the laws of another State or county, doing a banking business authorized by this chapter.

3. Every other incorporated company, partnership or association of two or more individuals doing a banking business authorized by this chapter, if the members thereof owning a majority interest therein or entitled to more than half the profits thereof or who would, if it was dissolved, be entitled to more than one-half the net assets thereof, are not residents of this State.

4. Every non-resident of this State doing a banking business authorized by this chapter in his own name and right only.

Historical: Laws 1905, 175, Sec. 46.

Same: Capital Required.

Sec. 2983. Every foreign bank or foreign banker heretofore hav-

ing established or hereafter establishing an office in this State, shall have and at all times maintain, at every such office, a capital not less in amount than that required by this chapter for the organization of a State bank, at the time when and place where such office was or shall be opened, and no such foreign bank or foreign banker shall set forth on the stationery of such bank or banker, or in any manner advertise, a greater capital, surplus and undivided profits than are actually maintained at any such bank within this State: *Provided*, That every foreign bank and every foreign banker, shall be subject to all provisions of this chapter to the same extent as banks or bankers organized or doing a banking business under or by virtue of the laws of this State.

Historical: Laws 1905, 175, Sec. 44.

Same: Penalties.

Sec. 2984. Every foreign bank or foreign banker, and every officer, agent or employee thereof, violating any of the provisions of the chapter shall, for each violation, forfeit and pay to the State of Idaho the sum of one thousand dollars, and shall, in addition thereto, be subject to all of the penalties provided for in this chapter. Said forfeiture may be recovered in an action by the Attorney General in the name of the State of Idaho, in the District Court of the county where such bank or branch bank shall be located.

Historical: Laws 1905, 175, Sec. 45.

ARTICLE 2.

TRANSACTION OF BANKING BUSINESS.

Section	Section
2985. Receiving deposits when insolvent.	2991. Savings banks and trust companies.
2986. Accounts of persons under disabilities.	2992. Same: Investment of funds.
2987. Limitations on unsecured loans.	2993. Same: Interest on deposits.
2988. Certified checks.	2994. Same: Accounts of persons under disability.
2989. Loans to officers.	2995. Accounts: How kept.
2990. Depositors are preferred creditors.	2996. Existing investments.
	2997. Disposition of unclaimed deposits.

Receiving Deposits When Insolvent.

Sec. 2985. The owners or officers of any bank who shall fraudulently and with intent to cheat and defraud any person, receive any deposit knowing that such bank is insolvent, shall be deemed guilty of a felony, and punished, upon conviction therefor, by a fine not exceeding one thousand dollars, or by imprisonment in the State Penitentiary not exceeding two years, or by both such fine and imprisonment, at the discretion of the court.

Historical: Laws 1905, 175, Sec. 19.

Cross Reference: Officers receiving deposits when the bank is insolvent

are guilty of misdemeanor: Sec. 7119.

Accounts of Person Under Disabilities.

Sec. 2986. When any minor, married woman or other person un-

der disability, shall make a deposit in any bank in his or her own name, such bank may pay such money on a check or order of such person, the same as in other cases, and such payment shall be in all respects valid in law.

Historical: Laws 1905, 175, Sec. 20.

Limitations on Unsecured Loans.

Sec. 2987. The total liability to any bank of any person or persons, or of any company, corporation or firm, for money loaned, including in the liabilities of the company or firm the liabilities of the several members thereof, except special partners, shall at no time exceed fifty per cent of the aggregate capital, surplus and undivided profits of such bank; but the discount of bills of exchange drawn in good faith against actual existing values, and the discount of commercial or business paper actually owned by the persons negotiating the same, shall not be considered as money borrowed: *Provided, however,* That the foregoing limitations shall not apply to loans upon real estate or other collateral securities representing actual value, or loans made on warehouse receipts and bills of lading.

Historical: Laws 1905, 175, Sec. 21.

Certified Checks.

Sec. 2988. No owner, officer, agent, clerk or employee of a bank shall certify a check unless the amount thereof actually stands to the credit of the drawer on the books of the bank, and any person who shall wilfully violate this provision, shall, on conviction thereof, be deemed guilty of a felony and be punished by a fine not exceeding one thousand dollars. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank in the hands of an innocent holder.

Historical: Laws 1905, 175, Sec. 22.

Loans to Officers.

Sec. 2989. No partnership, firm or individual transacting a banking business in this State shall be permitted to carry any note or obligations of any such partnership or firm or individual or any members of such partnership or firm, as a part of the assets of the bank. And no officer or employee of any corporation transacting a banking business in this State, shall be permitted to loan to himself any of the funds of the bank upon his own note or obligation, without having first obtained the approval of a majority of the board of directors of the bank, or of an executive board or discounting committee selected by a majority of the board of directors, such selection to be recorded in the minutes, and the approval of the loan, if obtained, shall be made a part of the records of the bank. And if the directors of any incorporated bank shall knowingly permit any of the officers, directors or employees of such bank to borrow the funds of such bank in an excessive and dishonest manner, or in a manner incurring great risk of loss to such bank, every director who participated in and assented to the same, shall be held liable in his personal and individual capacity for all damage which the association, the bank, its shareholders,

or any other person, shall have sustained in consequence of such violation.

Historical: Laws 1905, 175, Sec. 31.

Depositors Are Preferred Creditors.

Sec. 2990. In the event of insolvency or bankruptcy of any person, firm, co-partnership or corporation maintaining, operating or conducting a bank or a banking department or doing business within the meaning of this chapter, depositors of such bank or banking department shall have a first and prior lien on all the assets of such bank or banking department, and in the distribution of such assets or the proceeds thereof, the same shall first be applied to satisfy the amount due such depositors; and if any person, firm, co-partnership or corporation, maintains, operates or conducts one or more branch or subordinate banks, or more than one bank or banking departments, or does a banking business within the meaning of this chapter at more than one place, the depositors of any such bank or subordinate bank or banking department shall have a first and prior lien upon all the assets of such bank, branch or subordinate bank or banking department where such deposit was made or credit extended, and in the distribution of such assets or the proceeds thereof, the same shall first be applied to satisfy the amount due such depositors.

Historical: Laws 1905, 175, Sec. 47.

Savings Banks and Trust Companies.

Sec. 2991. Any bank which shall designate its business as that of a savings bank, and any trust company existing under the laws of this State, shall have power to carry on the business of banking, as prescribed and limited in this chapter, and may receive money on savings deposits, and such deposits shall be repaid to the depositor and his lawful representatives when required, at such time or times and with such interest as the regulations of the bank from time to time prescribe. A pass book shall be issued to each savings depositor, containing the rules and regulations prescribed by the bank, governing such deposits, in which shall be entered each deposit made by and each payment made to such depositor. And no payment made to such depositor, and no payment or check against any such savings account, shall be made unless accompanied by and entered in the pass book issued therefor, except for good cause and assurance satisfactory to the bank officers; but nothing in this section shall prevent savings banks from issuing time certificates of deposit, or certificates of deposit specially issued subject to the rules and regulations governing savings deposits.

Historical: Laws 1905, 175, Sec. 23.

Same: Investment of Funds.

Sec. 2992. It shall be lawful for any savings bank, and for any other institution with a savings department to invest its savings deposits formed pursuant to the provisions of this chapter, to invest its capital and the money deposited in such bank as follows and not otherwise:

1. In bonds or interest bearing notes or certificates of the United States.

2. In bonds or interest bearing evidences of indebtedness of this State.

3. In bonds or warrants of any city, town, county, school district or irrigation district of this State, issued pursuant to authority of law; but not exceeding fifty per cent of the assets of any savings bank shall consist of bonds or warrants of any one city, or town, county, school district or irrigation district.

4. In bonds or warrants of any State in the Union, or any city, town, county, school or irrigation district of any such State, that has not for three years previous to such investment being made, defaulted in payment of the interest on its legal funded debt. But not exceeding fifty per cent of the assets of any such bank shall be invested in the bonds of any one State or of any county or municipality outside of this State.

5. In notes or bonds secured by mortgage to such savings bank, or by mortgage or by deed of trust to any trust company under the laws of this State, upon unencumbered real estate worth at least double the amount loaned thereon. Whenever buildings are included in the valuation of any real estate upon which a loan shall be made by such savings bank, they shall be insured by the borrower for the benefit of such savings bank in some reliable company, and such policy of insurance shall be assigned to such savings bank, and it shall be lawful for such savings bank to renew such policy of insurance from year to year in case the borrower neglects to do so, and to charge the same to him.

6. In real estate, subject to the provisions of Section 2978, except that no savings bank hereafter established shall have more than fifty per cent of its capital invested in the lot and building in which the business of such savings bank may be carried on.

7. In dealing in exchange by purchasing and selling sight and time drafts and notes.

8. While awaiting opportunity for judicious investment of the funds deposited with such savings bank, to loan the moneys so deposited upon well secured commercial paper or upon the security of stocks and other securities, not exceeding eighty per cent of the cash market value thereof.

Historical: Laws 1905, 175, Sec. 24.

Same: Interest on Deposits.

Sec. 2993. It shall be the duty of the board of directors of such savings bank, from time to time, to regulate the interest allowed depositors, and to pay the same at regular stated periods.

Historical: Laws 1905, 175, Sec. 25.

Same: Accounts of Persons Under Disability.

Sec. 2994. When any deposit is made in any savings bank by any person being a minor, married woman, or other person under disability, such bank may pay to such person such sums as may be due to him or her, as in the case of other persons, and such payment shall be in all respects valid in law.

Historical: Laws 1905, 175, Sec. 26.

Accounts: How Kept.

Sec. 2995. Any bank combining the business of a commercial bank and a savings bank shall keep separate books of account for each kind of business: *Provided*, That all receipts, investments and transactions relating to each kind of business shall be governed by the provisions and restrictions herein specifically provided for the respective kinds of banks.

Historical: Laws 1905, 175, Sec. 27.

Existing Investments.

Sec. 2996. Nothing in this chapter shall be construed to affect the legality of the investments heretofore made, or of transactions heretofore had, pursuant to any provisions in force when such investments were made or transactions had, nor to change any investments for those named in this chapter.

Historical: Laws 1905, 175, Sec. 28. This section is left unchanged, although it applies only to investments made prior to the taking effect of the original act, on March 6th, 1905. Investments made between that date,

and the date of the adoption of these Codes, were, at the time when made, governed by the provisions of this chapter, and consequently only valid, under this section, if valid when made.

Disposition of Unclaimed Deposits.

Sec. 2997. The president of every savings bank, saving and loan society and every other bank depository, society or institution in which deposits of money are made, whether any interest or dividend is paid or agreed to be paid thereon or not, must, within fifteen days after the first day of January of every odd numbered year, return to the Bank Commissioner of this State a sworn statement showing the amount placed to the credit, the last known place of residence or post-office address, and the fact of death, if known to said president of every depositor who has not made a deposit therein or withdrawn therefrom any part of his deposit or any part of the interest dividends thereon, for a period of ten years next preceding. Said president must give notice of these deposits in one or more newspapers published in or nearest the town, city, or village where said bank, society or other institution, or its principal place of business is situated, at least once a week for four successive weeks, the cost of such publication to be paid out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president to be living, or which, with the accumulation thereon, is less than fifty dollars. The Bank Commissioner must incorporate in his subsequent report each return made to him as provided in this section. Any president of any of the institutions mentioned in this section who neglects or refuses to make the sworn statement required herein is guilty of a misdemeanor.

After the publication of the notice above provided for has been completed for the term of six months, said banking institution shall pay over to the State Treasurer, for the benefit of the school fund, all moneys covered by said notices and unclaimed at said time.

Historical: Laws 1907, 554, Secs. 1, 2.

ARTICLE 3.

SUPERVISION OF BANKS BY THE COMMISSIONER.

Section

- 2998. Reserve required by banks.
- 2999. Reports of banks.
- 3000. Report of commissioner.
- 3001. Examination of banks.
- 3002. Examination of officers.
- 3003. Fees for examination.
- 3004. Impairment of capital.

Section

- 3005. Liquidation of banks.
- 3006. Compensation of receivers.
- 3007. Accounting for funds.
- 3008. Records of Commissioner: Secrecy.
- 3009. Application of article.
- 3010. Duties of Attorney General.

Note: The appointment, qualifications, salary, and general duties of the Bank Commissioner are provided for in Pol. Code, Secs. 189-194.

Reserve Required of Banks.

Sec. 2998. Every bank doing business under this chapter shall have on hand at all times, in available funds, not less than fifteen per cent of its demand liabilities; but one-half of such sum may consist of balances due them from good solvent banks.

Historical: Laws 1905, 175, Sec. 32.

Reports of Banks.

Sec. 2999. Every bank shall make at least two reports each year to the Bank Commissioner, according to forms to be prescribed by him, verified by the owners, president, manager or cashier, which shall exhibit in detail and under appropriate heads, the resources and liabilities of the bank on any past day by the Bank Commissioner specified, and shall be transmitted to the Bank Commissioner within ten days of the receipt of a request therefor from him; and the bank making such reports shall cause an abstract of the same to be published, within thirty days from date of call, in some newspaper published in the city or town where such bank is situated, and, if no newspaper is published therein, then in some newspaper published in the county; and shall furnish to the Bank Commissioner proof of such publication. The Bank Commissioner shall also have the power to call for special reports from any bank whenever, in his judgment, the same are necessary in order to obtain a full knowledge of its condition: *Provided*, That such special reports shall not be called for more than three times in any one year.

Historical: Laws 1905, 175, Sec. 33.

Report of Commissioner.

Sec. 3000. The Bank Commissioner shall receive and place on file in his office the reports required to be made by banks under this chapter; prepare and furnish on demand, to all the banks required to report, blank forms for such statements or reports as may be by law required of them; make, on or before the first day of December of each year, a report to the Governor of this State, containing a copy of the published abstract of the last report furnished by each bank under his jurisdiction; and any other proceedings had or done by him under this chapter, showing generally the condition of the banking business of this State; and such other matters in connection with such general banking business as, in his opinion, may be of interest to the public, with a detailed statement, verified by his oath, of all moneys,

fees, etc., received by him during the same period, and shall publish at least two hundred and fifty copies of such report in pamphlet form for distribution.

Historical: Laws 1905, 175, Sec. 34. Omitting the proviso which related to the Commissioner's report for the year 1905, as now obsolete.

Cross Reference: Reports of officers: Sec. 279.

Examination of Banks.

Sec. 3001. It shall be the duty of the Bank Commissioner, when he shall deem it necessary, and at least once in each year, without previous notice, to visit and make complete report and examination of the affairs of each bank falling within the provisions of this chapter, and file in his office a report of the same; and for this purpose he shall have authority to demand and inspect all books, papers, moneys, notes, bonds or evidences of debt of such bank.

Historical: Laws 1905, 175, Sec. 35.

Examination of Officers.

Sec. 3002. The Bank Commissioner shall have authority to examine on oath the officers, agents, clerks, owner or owners of any bank, touching the matters which he is by this chapter directed to examine into, and any wilful false swearing in any such examination shall be deemed to be perjury and punished as such.

Historical: Laws 1905, 175, Sec. 36.

Cross Reference: Punishment for perjury: Sec. 6486.

Fees for Examination.

Sec. 3003. The Bank Commissioner shall collect from each bank, for each complete examination of its condition, an amount regulated according to the capital, surplus, undivided profits and assets of said bank, divided as to capital, surplus and undivided profits, and as to the total assets, according to the following schedule, to-wit:

For all banks having a capital, surplus and undivided profits amounting to ten thousand dollars and less than twenty-five thousand dollars, fifteen dollars.

Twenty-five thousand dollars and under fifty thousand dollars, twenty dollars.

Fifty thousand dollars and under seventy-five thousand dollars, twenty-five dollars.

Seventy-five thousand dollars and under one hundred thousand dollars, thirty dollars.

One hundred thousand dollars and under one hundred fifty thousand dollars, thirty-five dollars.

One hundred fifty thousand dollars and under two hundred thousand dollars, forty dollars.

Two hundred thousand dollars and under two hundred fifty thousand dollars, forty-five dollars.

Two hundred fifty thousand dollars and under five hundred thousand dollars, fifty-five dollars.

Five hundred thousand dollars and upward, sixty-five dollars.

Together with the following additional charge according to the total assets of each bank as shown at the time of examination:

Under fifty thousand dollars, fifteen dollars.

Fifty thousand dollars and under one hundred thousand dollars, twenty dollars.

One hundred fifty thousand dollars and under two hundred fifty thousand dollars, twenty-five dollars.

Two hundred fifty thousand dollars and under three hundred fifty thousand dollars, thirty dollars.

Three hundred fifty thousand dollars and under five hundred thousand dollars, thirty-five dollars.

Five hundred thousand dollars and under seven hundred fifty thousand dollars, thirty-five dollars.

Seven hundred fifty thousand dollars and under one million dollars, forty dollars.

One million dollars and under one million five hundred thousand dollars, forty-five dollars.

One million five hundred thousand dollars and under two million dollars, fifty-five dollars.

Two million dollars and under three million dollars, sixty-five dollars.

And all banks with total assets over three million dollars, seventy-five dollars.

Provided, however, That no bank shall be required to pay for for more than one examination during any one year.

Historical: Laws 1905, 175, Sec. 37.

Impairment of Capital.

Sec. 3004. Whenever it shall appear from a report or examination of any bank, after having been authorized to do or continue business under the provisions of this chapter, that the capital of such bank is reduced by impairment or otherwise below the amount required by Section 2970, it shall be the duty of the Commissioner to require such bank to make good the deficiency; and to give effect to such requisition, he shall have power to examine any such bank to ascertain the amount of such impairment or reduction of capital and whether the deficiency has been made good in compliance with his requisition; and if such bank shall neglect, for six months after such requisition has been made, to make good the deficiency so appearing or found to exist, the same shall be cause for proceedings provided for in the following section.

Historical: Laws 1905, 175, Sec. 38.

Liquidation of Banks.

Sec. 3005. If the Bank Commissioner, on examination of the affairs of any bank governed by this chapter, shall find that such bank has been guilty of violating its charter or the provisions of this chapter, he shall, by an order addressed to the bank so offending, direct the discontinuance of such illegal practices; and if such bank shall refuse or neglect to comply with such order, or whenever such Commissioner has reasonable cause to consider such bank insolvent, he may immediately apply, in his official capacity, to the District Court of

the county in which such bank has its principal place of business, for the appointment of a receiver for such bank, who, if he be appointed, shall proceed to administer the assets of the bank in accordance with law. Should it appear that the Commissioner in any such case has proceeded maliciously or without reasonable cause, he shall be held liable to such bank on his official bond for any damages resulting therefrom, including all expenses and costs of such proceedings, and, in addition, the Commissioner shall, upon conviction, be deemed guilty of a felony, and punished by a fine not exceeding one thousand dollars, or by imprisonment in the State penitentiary not exceeding two years, or by both such fine and imprisonment, at the discretion of the court.

Historical: Laws 1905, 175, Sec. 39.

Compensation of Receivers.

Sec. 3006. Receivers provided for in this chapter shall receive such compensation as shall be allowed by the court, but in no event to exceed the fees allowed executors and administrators in the administration of an estate.

Historical: Laws 1905, 175, Sec. 40.

Cross Reference: Fees of executors and administrators: Sec. 5586.

Accounting for Funds.

Sec. 3007. The Bank Commissioner shall, at the close of each month, pay into the State Treasury all sums of money received by him during such month as fees or from any other official source connected with his department.

Historical: Laws 1905, 175, Sec. 41.

Records of Commissioner: Secrecy.

Sec. 3008. The Bank Commissioner shall keep proper books of records of all acts, matters and things done by him under the provisions of this chapter as records of his office. Neither he nor his assistants shall disclose to any person any fact or information obtained in the course of business of the department, except so far as this chapter makes it their duty to make public records and publish the same; and any violation of this provision shall subject the offender to prosecution for felony in any court of competent jurisdiction, and, upon conviction therefor, to punishment by a fine not exceeding one thousand dollars, with imprisonment in the county jail until the same is paid; and such conviction shall subject the offender to a forfeiture of his office or employment.

Historical: Laws 1905, 175, Sec. 42.

Application of Article.

Sec. 3009. The foregoing provisions of this article, so far as applicable, shall govern and apply to State banks, private banks and foreign banks, receiving deposits.

Historical: Laws 1905, 175, Sec. 9. proviso; the first portion of the section constitutes Sec. 2972. Rewritten

to conform to the sectioning of this chapter instead of the original act.

Duties of Attorney General.

Sec. 3010. The Attorney General of the State shall conduct all actions, suits or proceedings begun by the Bank Commissioner under the authority of this chapter.

Historical: Laws 1905, 175, Sec. 48.

CHAPTER 14.

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

Section	Section
3011. Formation of corporations.	3020. Contents of articles.
3012. Additional requirements of articles.	3021. Powers of corporation sole.
3013. Power to hold property.	3022. Same.
3014. Same: Additional property.	3023. Execution of deeds and other instruments.
3015. Mortgage of property.	3024. Articles as evidence.
3016. Provisions of by-laws.	3025. Successor as corporation sole.
3017. Death benefit associations.	3026. Title in abeyance pending appointment.
3018. Corporation sole.	
3019. Execution of articles.	

Formation of Corporations.

Sec. 3011. Any number of persons associated together for any purpose, where pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this title.

Historical: Rev. St. 1887, Sec. 2760.
California Legislation: Similar: Civ. Code 1872, Sec. 593; as amended:

Deering's Code, ib.; further amended: Kerr's Code, ib.

Additional Requirements of Articles.

Sec. 3012. In addition to the requirements of Chapter 1, the articles of incorporation of any such association must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

Historical: Rev. St. 1887, Sec. 2761.
California Legislation: Same except "Section 290" for "Chapter 1", line 1,

and "such" omitted after "any", line 2: Civ. Code 1872, Sec. 594; Deering's Code, ib.; Kerr's Code, ib.

Power to Hold Property.

Sec. 3013. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association.

Historical: Rev. St. 1887, Sec. 2762.
California Legislation: Same with additional provision: Civ. Code 1872,

Sec. 595; additional provisions as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Same: Additional Property.

Sec. 3014. In addition to that provided for in the preceding sec-

tion, Masons, Odd Fellows, and pioneer incorporated associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith.

Historical: Rev. St. 1887, Sec. 2763.

California Legislation: Same with additional provisions: Civ. Code 1872,

Sec. 596; as amended: Deering's Code, ib.; Kerr's Code, ib.

Mortgage of Property.

Sec. 3015. Religious, social or benevolent corporations, through their directors or trustees, may mortgage or sell real property held by them whenever a majority of the members of the said corporation present at the meeting called as herein provided may so direct by their votes: *Provided*, That notice of the meeting at which the intended vote on the proposition will be taken be published in three newspapers of general circulation, at least once in each of the three weeks immediately preceding the meeting: *Provided, further*, The newspapers shall be published in the county in which the said real property is located, or in the judicial district in which the property is located if there be not three newspapers in the county.

Historical: Rev. St. 1887, Sec. 2764; amended Laws 1899, 436, Sec. 1; amended Laws 1903, 342, Sec. 1.

Cited: Portneuf Lodge v. Western etc. Saving Co. (1899) 6 Ida. 673; 59 Pac. 362.

Provisions of By-Laws.

Sec. 3016. Corporations organized for purposes other than for profit may in their by-laws, ordinances, constitutions, or articles of incorporation, in addition to the provisions in Chapter 1, provide for:

First. The qualifications of members, mode of election, and terms of admission to membership;

Second. The fees of admission and dues to be paid to their treasury by members;

Third. The expulsion and suspension of members for misconduct or non-payment of dues; also, for restoration to membership;

Fourth. Contracting, securing, paying, and limiting the amount of their indebtedness;

Fifth. Other regulations not repugnant to the laws of the State and consonant with the objects of the corporation.

Historical: Rev. St. 1887, Sec. 2765.

California Legislation: Same except "Title 1 of this part" for "Chapter 1", line 3, and "to the Constitution or

laws" for "to the laws", subd. 5: Civ. Code 1872, Sec. 599; similar as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Death Benefit Associations.

Sec. 3017. Associations may be formed for the purpose of paying to the nominee of any member, a sum upon the death of said member not exceeding three dollars for each member of such association. No such association must exceed in number one thousand persons. It may upon the death of each member, levy an assessment upon each member living at the time of the death, not exceeding three dollars for each member, and collect the same, and pay the same to the nominee of such deceased; and may also provide for the payment of such annual payments by members as may be deemed best. Such annual

assessment upon any one member must not be raised above the annual assessment established at the time such member joined such association. Such association, by its name, may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, and such other real estate as it may be necessary to purchase on foreclosure of its mortgages: *Provided*, Such real estate so obtained through foreclosure shall be sold and conveyed within five years from the day title is obtained, unless the District Court of the proper District shall, upon petition and good cause shown, extend the time.

Historical: Rev. St. 1887, Sec. 2766.

Corporation Sole.

Sec. 3018. Incorporations may be formed for acquiring, holding and disposing of church or religious society property, for the benefit of religion, for works of charity and for public worship, in the manner hereinafter provided in this chapter.

Historical: Laws 1899, 236, Sec. 1;
re-enacting Laws 1895, 24, Sec. 1.

Execution of Articles.

Sec. 3019. Any person being the archbishop, bishop, president, trustee in trust, president of stake, overseer, presiding elder, rabbi or clergyman, of any church or religious society, who shall have been duly chosen, elected or appointed, in conformity with the constitution, canons, rights, regulation or discipline of said church or religious society, and in whom shall be vested the legal title to the property of such church or religious society, may make and subscribe written articles of incorporation in duplicate, and acknowledge the same before some officer authorized to take acknowledgments, and file one of such articles in the office of the Secretary of State and retain possession of the other.

Historical: Laws 1895, 24, Sec. 2;
re-enacted Laws 1899, 236, Sec. 2;
amended Laws 1903, 302, Sec. 1.

Contents of Articles.

Sec. 3020. The articles of incorporation shall specify:

First. The name assumed by the corporation and by which it shall be known;

Second. The object of said corporation;

Third. The estimated value of the property at the time of making the articles of incorporation;

Fourth. The title of person making such articles.

Historical: Laws 1899, 236, Sec. 3;
re enacting Laws 1895, 24, Sec. 3.

Powers of Corporation Sole.

Sec. 3021. Upon making and filing for record articles of incorporation as herein provided, the person subscribing the same and his successor in office, by the name or title specified in the articles, shall thereafter be deemed and is hereby created, a body politic and a

corporation sole, with continual perpetual succession, and shall have power to acquire and possess, by donation, gift, bequest, devise or purchase, and to hold and maintain, property, real, personal, and mixed, and to grant, sell, convey, rent, or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation; and shall have authority to borrow money and to give written obligations therefor, and to secure the payment thereof by mortgage or other lien, upon real or personal property, when necessary to promote said objects.

Historical: Laws 1895, 24, Sec. 4;
re-enacted Laws 1899, 236, Sec. 4;
amended Laws 1903, 302, Sec. 2.

Same.

Sec. 3022. Such corporations shall have the power to contract and to be contracted with, to sue and be sued, plead and be pleaded in all courts of justice, and to have and use a common seal by which all deeds and acts of such corporation shall pass and be authenticated.

Historical: Laws 1899, 236, Sec. 5;
re-enacting Laws 1895, 24, Sec. 5.

Execution of Deeds and Other Instruments.

Sec. 3023. All deeds and other instruments of writing shall be made in the name of the corporation, and signed by the person representing the corporation in the official capacity designated in the articles of incorporation, and be sealed with the seal of the corporation, an impression of which seal shall be filed in the office of the Secretary of State.

Historical: Laws 1895, 24, Sec. 6;
re-enacted Laws 1899, 236, Sec. 6;
amended Laws 1903, 302, Sec. 3.

Articles as Evidence.

Sec. 3024. The articles of incorporation, or a certified copy of the ones filed and recorded in the office of the Secretary of State, shall be evidence of the existence of such corporation.

Historical: Laws 1899, 236, Sec. 7;
re-enacting Laws 1895, 24, Sec. 7.

Successor as Corporation Sole.

Sec. 3025. In the event of the death or resignation of any such archbishop, bishop, president, trustee in trust, president of stake, overseer, presiding elder, rabbi or clergyman, or of his removal therefrom, by the person or body having the authority to remove him when such person is at the time a corporation sole, his successor in office as such corporation sole, shall be vested with the title to any and all property held by his predecessor, as such corporation sole, with like power and authority over the same, and subject to all the legal liabilities and obligations thereto. Such successor shall file in the office of the county recorder of each county wherein any of said real property is situated a certified copy of his commission, certificate, or letter of election or appointment.

Historical: Laws 1903, 302, Sec. 4;
adding Sec. 8 to Laws 1899, 236.

Title in Abeyance Pending Appointment.

Sec. 3026. In case of death, resignation or removal of any such archbishop, bishop, president, trustee in trust, president of stake, overseer, presiding elder, rabbi or clergyman, who, at the time of his death, resignation or removal, was holding the title to trust property, for the use or benefit of any church or religious society, and not incorporated as a corporation sole, the title to any and all such property held by him, of every nature and kind, shall not revert to the donor nor vest in the heirs of such deceased person, but shall be deemed to be in abeyance after such death, resignation or removal, until his successor is duly appointed to fill such vacancy, and, upon the appointment of such successor, the title to all the property held by his predecessors shall, at once, without any act or deed, vest in the person appointed to fill such vacancy.

Historical: Laws 1903, 302, Sec. 5;
adding Sec. 9 to Laws 1899, 236.

CHAPTER 15.**INSTITUTIONS OF LEARNING.****Section**

- 3027. Who may form corporations.
- 3028. Articles of incorporation.
- 3029. Number of directors.
- 3030. Certificate of Secretary of State.
- 3031. Amendment of articles.
- 3032. Powers of corporations.

Section

- 3033. Election of directors or trustees.
- 3034. Powers of directors.
- 3035. Religious tests prohibited.
- 3036. Corporations for private gain prohibited.

Who May Form Corporations.

Sec. 3027. Any number of persons not less than five, may form a corporation to found, establish and maintain a college, academy, seminary or other institution of learning, by executing and filing articles of incorporation in the manner provided by law for private corporations.

Historical: Laws 1899, 169, Sec. 1;
re-enacting Laws 1893, 14, Sec. 1.

Articles of Incorporation.

Sec. 3028. The articles of incorporation shall set forth:

First. The name of the corporation;

Second. The purposes for which it is formed;

Third. The place where the institution is to be located;

Fourth. The number of its directors or trustees, and the names and addresses of those who are first appointed.

Historical: Laws 1899, 169, Sec. 2;
re-enacting Laws 1893, 14, Sec. 2.

Number of Directors.

Sec. 3029. The number of directors or trustees shall not be less than five, nor more than eighteen, a majority of whom shall be residents of the State of Idaho.

Historical: Laws 1899, 169, Sec. 3;
re-enacting Laws 1893, 14, Sec. 3.

Certificate of the Secretary of State.

Sec. 3030. When the articles of incorporation are filed as provided in Section 3027, the Secretary of State shall issue a certificate over the Great Seal of the State, stating that a copy of the articles of incorporation has been filed in his office containing the necessary statement of facts.

Historical: Laws 1899, 169, Sec. 4;
re-enacting Laws 1893, 14, Sec. 4.

Amendment of Articles.

Sec. 3031. The articles of incorporation may be altered or amended in any particular except as to the purposes for which the corporation is formed, and such alteration or amendment shall have effect from and after the time of filing a certificate of the same, executed by at least two-thirds of the directors or trustees, in the same manner as the original articles are filed. When such alteration or amendment changes the name, the Secretary of State shall issue a certificate stating the fact.

Historical: Laws 1899, 169, Sec. 5;
re-enacting Laws 1893, 14, Sec. 5.

Powers of Corporations.

Sec. 3032. Such corporation shall have power of perpetual succession, and in addition to the powers granted by law to other private corporations, shall have power to take by purchase, gift, grant, devise or bequest, and to hold for the use of such corporation, any real or personal property whatsoever, and to sell, convey, mortgage or otherwise use the same as may be considered most conducive to the interests of such institution; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the corporation, and such corporation shall have no power to divert any gift, grant, bequest or devise from the specific purpose designated by the donor.

Historical: Laws 1899, 169, Sec. 6;
re-enacting Laws 1893, 14, Sec. 6.

Election of Directors or Trustees.

Sec. 3033. Such corporation shall by its by-laws provide for the election of directors or trustees, in such manner, at such times and places, for such periods, and from such persons, as may be considered most conducive to its interests: *Provided*, A majority of such directors or trustees shall be bona fide residents of the State of Idaho.

Historical: Laws 1899, 169, Sec. 7;
re-enacting Laws 1893, 14, Sec. 7.

Powers of Directors.

Sec. 3034. The directors shall have the control of the affairs and property of the corporation, and may appoint and fix salaries of president, principal and professors, tutors and other teachers, and such other officers and agents as they may deem necessary, and remove them at pleasure; and may prescribe the course of study and the discipline to be observed in the institution, or any department thereof, and may grant such literary honors and degrees as are usually

granted by like institutions, and give suitable diplomas in testimony thereof.

Historical: Laws 1899, 169, Sec. 8;
re-enacting Laws 1893, 14, Sec. 8.

Religious Tests Prohibited.

Sec. 3035. No religious test whatever shall be required of any applicant for admission into any institution of learning existing under the provisions of this chapter.

Historical: Laws 1899, 169, Sec. 9;
re-enacting Laws 1893, 14, Sec. 9.

Corporations for Private Gain Prohibited.

Sec. 3036. No corporation whose purpose is private gain shall ever be incorporated or continued in existence by virtue of the provisions of this chapter.

Historical: Laws 1899, 169, Sec. 10;
re-enacting Laws 1893, 14, Sec. 10.

CHAPTER 16.

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AGRICULTURAL FAIR CORPORATIONS.

Section	Section
3037. Power to hold real estate.	3040. County commissioners may contribute to fairs.
3038. Limitation on indebtedness.	
3039. Not to be conducted for profit.	

Power to Hold Real Estate.

Sec. 3037. Agricultural fair corporations may purchase, hold, or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same at pleasure. This real estate must be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactories, stock raising, and general domestic industry.

Historical: Rev St. 1887, Sec. 2775.	line 7; Civ. Code 1872, Sec. 620; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same except "manufactures" for "manufactories",	

Limitation on Indebtedness.

Sec. 3038. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

Historical: Rev. St. 1887, Sec. 2776.	Code 1872, Sec. 621; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same: Civ.	

Not to Be Conducted for Profit.

Sec. 3039. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived

from charges to exhibitors and fees for membership, which charges, together with the term of membership and the mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

Historical: Rev. St. 1887, Sec. 2777.		Code 1872, Sec. 622; Deering's Code,
California Legislation: Same: Civ.		ib.; Kerr's Code, ib.

County Commissioners May Contribute to Fairs.

Sec. 3040. The board of county commissioners of any county in this State, in which there is a regularly organized agricultural fair association, or any other corporation or company having for its object the exhibition of live stock and agricultural products of their county or the State, may, in their discretion, appropriate annually out of the county treasury, any sum not exceeding in amount one-half of one mill on every dollar of taxable property in said county, as shown by the assessment roll of the preceding year of said county, to be paid to the trustees or managers of such association, to assist in defraying the expenses of such fair: *Provided*, None of the moneys so appropriated shall be used in defraying expenses of races of any character, nor for the payment of purses for said races. But no appropriation can be made in any year in which a fair is not held, nor can any appropriation be made to more than one such corporation in any one year. Appropriations made under this section shall be paid out of the current expense fund.

Historical: Rev. St. 1887, Sec. 2778;
amended Laws 1905, 350, Sec. 1.

CHAPTER 17.

GAS CORPORATIONS.

Section	Section
3041. Consent of municipality must be obtained.	3043. Same: Applicant must defray expenses.
3042. Duty to furnish gas on application.	3044. Right to inspect meters.
	3045. Discontinuance of supply.

Consent of Municipality Must Be Obtained.

Sec. 3041. No corporation hereafter formed must supply any city or town with gas, or lay down mains or pipes for that purpose in the streets or alleys thereof, without permission from the city or town authorities.

Historical: Rev. St. 1887, Sec. 2787.		Code 1872, Sec. 628; Deering's Code,
California Legislation: Similar: Civ.		ib.; repealed 1905.

Duty to Furnish Gas on Application.

Sec. 3042. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas as required for such building or premises, and can not refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of

ten days after such application, the corporation refuses or neglects to supply the gas required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars a day as liquidated damages, for every day such refusal or neglect continues thereafter.

Historical: Rev. St. 1887, Sec. 2788.
California Legislation: Same: Civ.
Code 1872, Sec. 629; Deering's Code,

ib.; similar but applies also to electricity: Kerr's Code, ib.

Same: Applicant Must Defray Expenses.

Sec. 3043. No corporation is required to lay a service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof.

Historical: Rev. St. 1887, Sec. 2789.
California Legislation: Same: Civ.

Code 1872, Sec. 630; Deering's Code, ib.; Kerr's Code, ib.

Right to Inspect Meters.

Sec. 3044. Any agent of a gas corporation, exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas supplied by such corporation, to inspect the gas meters therein, to ascertain the quantity of gas supplied or consumed. Every owner or occupant of such buildings who hinders or prevents such entry or inspection must pay to the corporation the sum of fifty dollars as liquidated damages.

Historical: Rev. St. 1887, Sec. 2790.
California Legislation: Same: Civ.
Code 1872, Sec. 631; Deering's Code,

ib.; similar applying also to electricity: Kerr's Code, ib.

Discontinuance of Supply.

Sec. 3045. All gas corporations may shut off the supply of gas from any person who neglects or refuses to pay for the gas supplied, or the rent for any meter, pipes, or fittings provided by the corporation as required by his contract; and for the purpose of shutting off the gas in such case, any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of any day, and remove therefrom any property of the corporation used in supplying gas.

Historical: Rev. St. 1887, Sec. 2791.
California Legislation: Same: Civ.
Code 1872, Sec. 632; Deering's Code,

ib.; similar but also applies to electricity: Kerr's Code, ib.

CHAPTER 18.

LAND AND BUILDING CORPORATIONS.

Section	Section
3046. Organization.	3052. Annual statement.
3047. Power to borrow money.	3053. Liability of shareholders.
3048. Purchase of real estate: Buildings and loans.	3054. Consolidation and transfer of assets.
3049. Insurance of members.	3055. Married women and minors as members.
3050. Power to hold real estate.	
3051. Contents of by-laws.	

Organization.

Sec. 3046. Corporations organized for the erection of buildings and making other improvements on real property, may raise funds in shares not exceeding two hundred dollars each, payable in periodical installments. Such bodies are known as land and building corporations, and may be organized with or without a capital stock.

Historical: Rev. St. 1887, Sec. 2796.

California Legislation: Similar: Civ. Code 1872, Sec. 639; same as amended: Deering's Code, ib.; repealed 1891.

Usury Not Authorized: There is no provision in this chapter which au-

thorizes a building and loan association to extort usurious rates of interest from its debtors. *Fidelity Savings Assn. v. Shea* (1899) 6 Ida. 405; 55 Pac. 1022.

Power to Borrow Money.

Sec. 3047. Any such corporation may borrow money for the purpose of carrying out its objects, and may give as security therefor its shares or mortgages upon its real estate.

Historical: Rev. St. 1887, Sec. 2797.

California Legislation: Same except "mortgage" for "mortgages," line 3:

Civ. Code 1872, Sec. 640; Deering's Code, ib.; see Kerr's Code, Sec. 641.

Purchase of Real Estate: Buildings and Loans.

Sec. 3048. Any such corporation may purchase real estate and erect buildings for its members, and make loans to its members for the purpose of aiding them in acquiring and improving real estate. Such loans must in all cases be secured on such real estate.

Historical: Rev. St. 1887, Sec. 2798.

California Legislation: Same: Civ.

Code 1872, Sec. 641; Deering's Code, ib.; See Kerr's Code, Sec. 640.

Insurance of Members.

Sec. 3049. Such corporation may insure, in some life insurance company, the lives of its members and debtors. In case of the death of a debtor or member so insured, the amount recovered on the policy, must be applied to extinguish the indebtedness, including the premium paid, and the residue, if any, must be paid to the legal representative of the decedent.

Historical: Rev. St. 1887, Sec. 2799.

California Legislation: Same except "incorporated under the laws of this

State" inserted after "company", line 2: Civ. Code 1872, Sec. 642; Deering's Code, ib.; repealed 1891.

Power to Hold Real Estate.

Sec. 3050. Any such corporation may purchase, hold, and convey real estate, as follows:

First. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed twenty thousand dollars;

Second. Such as may, from time to time, be necessary to supply the wants of members, the cost of which held unallotted to the members thereof at any one time, must not exceed the sum of fifty thousand dollars;

Third. Such as has been mortgaged, pledged, or conveyed to it in trust, to secure money loaned or to secure the purchase price thereof in pursuance of the regular business of the corporation.

Historical: Rev. St. 1887, Sec. 2800.
California Legislation: Same except
 "one hundred" for "fifty" thousand

dollars, subd. 2: Civ. Code 1872, Sec.
 643; Deering's Code, ib.; repealed
 1891.

Contents of By-Laws.

Sec. 3051. The by-laws of such corporation must specify the amount of the periodical subscriptions or payments to be made by each member, the time and manner in which such payments are to be made; the fines and forfeitures for default; the time and manner of election of directors and other officers, and their terms of office; the manner in which real estate may be distributed, allotted or sold to its members; the terms and conditions upon which loans may be made to its members, and by them repaid to the corporation; the manner in which a person may become, and cease to be, a member; the conditions on which members may withdraw from the corporation, and the provisions for the payment to withdrawing members of the sums of money due them, arising from subscriptions or payments, and the proportion of the profits such withdrawing members may receive on withdrawal.

Historical: Rev. St. 1887, Sec. 2801.
California Legislation: Same: Civ.

Code 1872, Sec. 644; Deering's Code,
 ib.; repealed 1891.

Annual Statement.

Sec. 3052. The secretary of any such corporation must, once in each year during the existence of the corporation, prepare a full and explicit statement of the financial affairs thereof, comprising a balance sheet, statements of receipts and expenditures, profit and loss, and assets and liabilities, which must be audited and verified by two competent persons (not directors) elected by the general body of shareholders, and be countersigned by the president and secretary. A copy of such statement must be printed and circulated among the members, and must appear immediately after the annual meeting of the corporation, daily at least one week, or weekly at least four weeks, in one or more newspapers published at the place of business of the corporation.

Historical: Rev. St. 1887, Sec. 2802.
California Legislation: Same except
 "the principal" inserted before "busi-

ness", next to last line: Civ. Code
 1872, Sec. 645; Deering's Code, ib.;
 see Kerr's Code, Sec. 644.

Liability of Shareholders.

Sec. 3053. Every present and past member of such corporation is personally liable for such proportion of all its debts and liabilities, incurred during his membership, as the number of shares subscribed by him bears to the whole number of subscribed shares; but no past member is liable for such contribution if more than one year elapsed since he ceased to be a member before suit is commenced, nor for any debt or liability contracted after the time at which he ceased to be a member, nor unless it appears to the court that the corporation is unable to satisfy such debts and liabilities; nor must any contribution be required from any member or past member exceeding the amount unpaid on the shares in respect to which it is liable.

Historical: Rev. St. 1887, Sec. 2803.
California Legislation: Similar: Civ.
 Code 1872, Sec. 646; repealed 1874.

Consolidation and Transfer of Assets.

Sec. 3054. Any two or more such corporations may unite and become incorporated in one body, with or without any dissolution or division of the funds of such corporation, or either of them; or any such corporation may transfer its engagements, funds and property to any other such corporation upon such terms as may be agreed upon by two-thirds of the members of each of such bodies present at general meetings of the members, convened for the purpose by notice stating the object of the meeting, sent through the postoffice to every member, and by general notice appearing daily at least one week, or weekly at least two weeks, in some newspaper published at the place of the principal business of the corporation; but no such transfer can prejudice any right of any creditor of either corporation.

Historical: Rev. St. 1887, Sec. 2804.
California Legislation: Same: Civ.

Code 1872, Sec. 647; Deering's Code, ib.; repealed 1891.

Married Women and Minors as Members.

Sec. 3055. Married women and minors may be admitted as members, and may take and hold shares in such corporations, and may execute all necessary instruments, and give all necessary acquittances, and sell and transfer their shares in like manner as other members.

Historical: Rev. St. 1887, Sec. 2805.
California Legislation: Same: Civ.

Code 1872, Sec. 648; repealed 1874.
See Kerr's Code, Sec. 543.

TITLE 5

PROPERTY AND OWNERSHIP

Chapter

1. General provisions.
2. Estates in real property.

Chapter

3. Rights and obligations of owners.
4. Personal property.

CHAPTER 1.

GENERAL PROVISIONS.

Section

3056. Real property defined.
3057. Personal property defined.
3058. Who may own property.
3059. Interests in common.
3060. Community property defined.
3061. Future interests: When vested.
3062. Contingent interests.
3063. Alternative future interests.
3064. Inheritance by posthumous children.

Section

3065. Transfer and devolution of future interests.
3066. Possibilities.
3067. Suspension of power of alienation.
3068. Future interests defeated.
3069. Same: Not defeated.
3070. Same: Premature determination of precedent estate.

Real Property Defined.

Sec. 3056. Real property or real estate consists of:

1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer;
2. That which is affixed to land;
3. That which is appurtenant to land.

Historical: Rev. St. 1887, Sec. 2825.

California Legislation: Similar: Civ. Code 1872, Sec. 658; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Real property defined: Sec. 16.

Cited: Welch v. Garrett (1897) 5 Ida. 639; 51 Pac. 405; Hall v. Blackman (1902) 8 Ida. 272; 68 Pac. 19; Johnson v. Hurst (1904) 10 Ida. 308; 77 Pac. 784; Boise Irr. etc. Co. v. Stewart (1904) 10 Ida. 38; 77 Pac. 25, 321.

What Constitutes Real Estate: Ditches and water rights are real es-

tate under the provisions of this section. Ada County Farmers' Irr. Co. v. Farmers' Canal Co. (1898) 5 Ida. 793; 51 Pac. 990.

A hotel building affixed to land, and held and conveyed as real estate, with the land upon which it stands, is real estate within the meaning of this section, and its character as such cannot be changed by the attempted execution of a chattel mortgage purporting to cover the building apart from the land. Beeler v. C. C. Merc. Co. (1902) 8 Ida. 644; 70 Pac. 943.

Personal Property Defined.

Sec. 3057. Every kind of property that is not real is personal.

Historical: Rev. St. 1887, Sec. 2826.

California Legislation: Same: Civ. Code 1872, Sec. 663; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Personal property defined: Sec. 16.

Who May Own Property.

Sec. 3058. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal.

Historical: Rev. St. 1887, Sec. 2827.

California Legislation: Same except "and" inserted before "hold" and "and dispose of" omitted: Civ. Code 1872, Sec. 671; same but "within this State"

added: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Limitations on alien ownership: Sec. 3609.

Interests in Common.

Sec. 3059. Every interest created in favor of several persons in their own right, is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, or unless acquired as community property.

Historical: Rev. St. 1887, Sec. 2828.

California Legislation: Same except "as provided in Section 683" inserted

after "interest", line 4: Civ. Code 1872, Sec. 686; Deering's Code, ib.; Kerr's Code, ib.

Community Property Defined.

Sec. 3060. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

Historical: Rev. St. 1887, Sec. 2829.

California Legislation: Same: Civ. Code 1872, Sec. 687; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Community property defined: Sec. 2680.

Future Interests: When Vested.

Sec. 3061. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the immediate or precedent interest.

Historical: Rev. St. 1887, Sec. 2830.

California Legislation: Same except "intermediate" for "immediate"; Civ. Code 1872, Sec. 694; Deering's Code, ib.; Kerr's Code, ib.

Vesting of Future Estate: Where a

will devises property to the testator's widow for life, with remainder to the testator's son, the title to the property vests immediately in the son upon the death of the testator. *Coats v. Harris* (1904) 9 Ida. 458; 75 Pac. 243.

Contingent Interests.

Sec. 3062. A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Historical: Rev. St. 1887, Sec. 2831.

California Legislation: Same: Civ.

Code 1872, Sec. 695; Deering's Code, ib.; Kerr's Code, ib.

Alternative Future Interests.

Sec. 3063. Two or more future interests may be created to take effect in the alternative; so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Historical: Rev. St. 1887, Sec. 2832.

California Legislation: Same: Civ.

Code 1872, Sec. 696; Deering's Code, ib.; Kerr's Code, ib.

Inheritance by Posthumous Children.

Sec. 3064. When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

Historical: Rev. St. 1887, Sec. 2833.

California Legislation: Same: Civ.

Code 1872, Sec. 698; Deering's Code, ib.; Kerr's Code, ib.

Transfer and Devolution of Future Interests.

Sec. 3065. Future interests pass by succession, will and transfer in the same manner as present interests.

Historical: Rev. St. 1887, Sec. 2834.

California Legislation: Same: Civ.

Code 1872, Sec. 699; Deering's Code, ib.; Kerr's Code, ib.

Possibilities.

Sec. 3066. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

Historical: Rev. St. 1887, Sec. 2835.

California Legislation: Same: Civ.

Code 1872, Sec. 700; Deering's Code, ib.; Kerr's Code, ib.

Suspension of Power of Alienation.

Sec. 3067. The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of the persons in being at the creation of the limitation or condition, except in the single case of contingent remainder in fee authorized in Section 3072.

Historical: Rev. St. 1887, Sec. 2836.

California Legislation: Same except "mentioned in Section 772" for the

words beginning with "contingent remainder": Civ. Code 1872, Sec. 715; Deering's Code, ib.; Kerr's Code, ib.

Future Interests Defeated.

Sec. 3068. A future interest, depending on the contingency of the death of any person without successors, heirs, issue or children, is defeated by the birth of a posthumous child of such person capable of taking by succession.

Historical: Rev. St. 1887, Sec. 2837.

California Legislation: Same: Civ.

Code 1872, Sec. 739; Deering's Code, ib.; Kerr's Code, ib.

Same: Not Defeated.

Sec. 3069. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise.

Historical: Rev. St. 1887, Sec. 2838.

California Legislation: Same with additional clause: Civ. Code 1872, Sec.

741; Deering's Code, ib.; Kerr's Code, ib.

Same: Premature Determination of Precedent Estate.

Sec. 3070. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

Historical: Rev. St. 1887, Sec. 2839.
California Legislation: Same: Civ.

Code 1872, Sec. 742; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 2.
ESTATES IN REAL PROPERTY.

Section

- 3071. Limitation of future estates.
- 3072. Successive remainders in fee.
- 3073. Limitation of successive life estates.
- 3074. Remainders upon successive life estates.
- 3075. Contingent remainders.
- 3076. Rule in Shelly's case abolished.

Section

- 3077. Power of appointment.
- 3078. Termination of tenancy at will.
- 3079. Same: Rights of landlord.
- 3080. Right of re-entry.
- 3081. Summary proceedings: Where provided for.
- 3082. Action for real property: Notice unnecessary.

Limitation of Future Estates.

Sec. 3071. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

Historical: Rev. St. 1887, Sec. 2850.
California Legislation: Same: Civ.

Code 1872, Sec. 767; Deering's Code, ib.; Kerr's Code, ib.

Successive Remainders in Fee.

Sec. 3072. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

Historical: Rev. St. 1887, Sec. 2851.
California Legislation: Same: Civ.

Code 1872, Sec. 772; Deering's Code, ib.; Kerr's Code, ib.

Limitation of Successive Life Estates.

Sec. 3073. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

Historical: Rev. St. 1887, Sec. 2852.
California Legislation: Similar: Civ.
Code 1872, Sec. 774; same as amend-

ed: Deering's Code, ib.; Kerr's Code, ib.

Remainders Upon Successive Life Estates.

Sec. 3074. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder created upon such estate in a term for years, unless it is for the whole residue of such term.

Historical: Rev. St. 1887, Sec. 2853.
California Legislation: Same except "provided for in the preceding sec-

tion" omitted: Civ. Code 1872, Sec. 775; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Contingent Remainder.

Sec. 3075. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the

precedent estate; and every such remainder is to be deemed a conditional limitation.

Historical: Rev. St. 1887, Sec. 2854.		Code 1872, Sec. 778; Deering's Code,
California Legislation: Same: Civ.		ib.; Kerr's Code, ib.

Rule in Shelley's Case Abolished.

Sec. 3076. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder, so limited to them, and not as mere successors of the owner for life.

Historical: Rev. St. 1887, Sec. 2855.		Code 1872, Sec. 779; Deering's Code,
California Legislation: Same: Civ.		ib.; Kerr's Code, ib.

Power of Appointment.

Sec. 3077. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

Historical: Rev. St. 1887, Sec. 2856.		Code 1872, Sec. 781; Deering's Code,
California Legislation: Same: Civ.		ib.; Kerr's Code, ib.

Termination of Tenancy at Will.

Sec. 3078. A tenancy or other estate at will, however created, may be terminated by the landlord giving notice in writing to the tenant, in the manner prescribed by the Code of Civil Procedure, to remove from the premises within a period of not less than one month, to be specified in the notice.

Historical: Rev. St. 1887, Sec. 2857.		Cross Reference: Service of notice
California Legislation: Same except "Section 1162 of" inserted after "by", line 3: Civ. Code 1872, Sec. 789; Deering's Code, ib.; Kerr's Code, ib.		on tenant: Sec. 5094.

Same: Rights of Landlord.

Sec. 3079. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

Historical: Rev. St. 1887, Sec. 2858.		Cross Reference: Proceedings for
California Legislation: Same: Civ. Code 1872, Sec. 790; Deering's Code, ib.; Kerr's Code, ib.		recovery of possession: Secs. 5091-5109.

Right of Re-Entry.

Sec. 3080. Whenever the right of re-entry is given to a grantor or a lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' notice as provided in the Code of Civil Procedure.

Historical: Rev. St. 1887, Sec. 2859.		Sec. 791; Deering's Code, ib.; Kerr's
California Legislation: Same except "Sections 1161 and 1162, Code" for "the Code", line 4: Civ. Code 1872,		Code, ib.
		Cross Reference: Service of notice: Sec. 5094.

Summary Proceedings: Where Provided For.

Sec. 3081. Summary proceedings for obtaining possession of real

property forcibly entered, or forcibly and unlawfully detained, are provided for in the Code of Civil Procedure.

Historical: Rev. St. 1887, Sec. 2860.	Code 1872, Sec. 792; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same except "Sections 1159 to 1175, both inclusive, of" inserted after "in", line 3: Civ.	Cross Reference: Summary proceedings: Secs. 5091-5109.

Action for Real Property: Notice Unnecessary.

Sec. 3082. An action for the possession of real property, leased or granted, with a right of re-entry, may be maintained at any time, in the District Court, after the right to re-enter has accrued, without notice.

Historical: Rev. St. 1887, Sec. 2861.	Code 1872, Sec. 793; Deering's Code, ib.; similar as amended: Kerr's Code, ib.
California Legislation: Same except "without the notice prescribed in 791" for "without notice", last words: Civ.	

CHAPTER 3.
RIGHTS AND OBLIGATIONS OF OWNERS.

Section	Section
3083. Rights of grantees against grantor's tenants.	3089. Change in terms of lease.
3084. Remedies of lessor against lessee's assignee.	3090. Removal of fixtures by tenant.
3085. Remedies of lessee against lessor's assignee.	3091. Ownership of street by abutter.
3086. Recovery of rent on lease for life.	3092. Right to lateral and subjacent support.
3087. Same: Recovery after death.	3093. Duties of tenant for life.
3088. Actions by reversioners.	3094. Monuments and fences.

Rights of Grantees Against Grantor's Tenants.

Sec. 3083. A person to whom any real property is transferred or devised, upon which rent has been reserved or to whom such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

Historical: Rev. St. 1887, Sec. 2875.	Civ. Code 1872, Sec. 821; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same except "any" inserted before "such", line 2:	

Remedies of Lessor Against Lessee's Assignee.

Sec. 3084. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

Historical: Rev. St. 1887, Sec. 2876.	Civ. Code 1872, Sec. 822; same as amended: Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same through "lessee", line 4, except "assigns" for "assignees", rest omitted:	

Remedies of Lessee Against Lessor's Assignee.

Sec. 3085. Whatever remedies the lessee of any real property may

have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

Historical: Rev. St. 1887, Sec. 2877.
California Legislation: Same: Civ.

Code 1872, Sec. 823; Deering's Code, ib.; Kerr's Code, ib.

Recovery of Rent on Lease for Life.

Sec. 3086. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

Historical: Rev. St. 1887, Sec. 2878.
California Legislation: Same: Civ.

Code 1872, Sec. 824; Deering's Code, ib.; Kerr's Code, ib.

Same: Recovery After Death.

Sec. 3087. Rent dependent on the life of a person may be recovered after as well as before his death.

Historical: Rev. St. 1887, Sec. 2879.
California Legislation: Same: Civ.

Code 1872, Sec. 825; Deering's Code, ib.; Kerr's Code, ib.

Action by Reversioners.

Sec. 3088. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

Historical: Rev. St. 1887, Sec. 2880.
California Legislation: Same: Civ.

Code 1872, Sec. 826; Deering's Code, ib.; Kerr's Code, ib.

Change in Terms of Lease.

Sec. 3089. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

Historical: Rev. St. 1887, Sec. 2881.
California Legislation: No such provision in Civ. Code 1872; same: Deer-

ing's Civ. Code, Sec. 827; Kerr's Code, ib.

Removal of Fixtures by Tenant.

Sec. 3090. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for the purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

Historical: Rev. St. 1887, Sec. 2882.
What Constitutes Fixtures: Property consisting of a front and back bar, ice chest, etc., placed in a

saloon building by a tenant and fastened to the wall and floor, constitute trade fixtures and may be removed by the tenant during the continuance of

his term. *Bush v. Havird* (1906) 12 Ida. 352; 86 Pac. 529.

Time for Removal: Trade fixtures must be removed by the tenant during the continuance of his term; the right

to remove them is lost after a surrender of possession by the tenant, or eviction by the landlord by summary proceedings. *Ib.*

Ownership of Street by Abutter.

Sec. 3091. An owner of land bounded by a road or street, is presumed to own to the center of the way, but the contrary may be shown.

Historical: Rev. St. 1887, Sec. 2883.
California Legislation: Same: Civ.

Code 1872, Sec. 831; Deering's Code, *ib.*; Kerr's Code, *ib.*

Right to Lateral and Subjacent Support.

Sec. 3092. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjacent land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavation.

Historical: Rev. St. 1887, Sec. 2884.
California Legislation: See Civ. Code 1872, Sec. 832; same as amend-

ed except "adjoining" for "adjacent", line 2: Deering's Code, *ib.*; Kerr's Code, *ib.*

Duties of Tenant for Life.

Sec. 3093. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

Historical: Rev. St. 1887, Sec. 2885.
California Legislation: Same: Civ.

Code 1872, Sec. 840; Deering's Code, *ib.*; Kerr's Code, *ib.*

Monuments and Fences.

Sec. 3094. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;
2. The fences between them, unless one of them chooses to let his land lie without fencing, in which case, if he afterwards encloses it, he must refund to the other the just proportion of the value, at that time, of any division fence made by the latter.

Historical: Rev. St. 1887, Sec. 2886.
California Legislation: Same: Civ. Code 1872, Sec. 841; Deering's Code, *ib.*; Kerr's Code, *ib.*

Cross Reference: Erection, maintenance and repair of partition fences: Secs. 1264-1275.

CHAPTER 4.
PERSONAL PROPERTY.

Section
3095. Conflict of laws.

Section
3096. Transfer and devolution of things in action

Conflict of Laws.

Sec. 3095. If there is no law to the contrary in the place where

personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

Historical: Rev. St. 1887, Sec. 2890.

California Legislation: Same: Civ.

Code 1872, Sec. 946; Deering's Code, ib.; Kerr's Code, ib.

Transfer and Devolution of Things in Action.

Sec. 3096. A thing in action arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

Historical: Rev. St. 1887, Sec. 2891.

California Legislation: Same: Civ.

Code 1872, Sec. 954; Deering's Code, ib.; Kerr's Code, ib.

TITLE 6

TRANSFERS

Chapter

1. Transfers in general.
2. Transfer of real property.
3. Acknowledgments.

Chapter

4. Recording transfers.
5. Unlawful transfers.

Note: Transfers by succession are provided for in Secs. 5700-5717 of the Code of Civil Procedure and transfers by will in Secs. 5752-5760 of that Code.

CHAPTER 1.

TRANSFERS IN GENERAL.

Section

3097. Transfer of possibilities.
3098. Right of re-entry is transferable.
3099. Transfer of disseizee.
3100. Oral transfers.
3101. Transfer in writing: How designated.

Section

3102. Words of inheritance not required.
3103. Grant effective on death without heirs.
3104. Co-interests deemed to be in common.

Transfer of Possibilities.

Sec. 3097. A mere possibility not coupled with an interest cannot be transferred.

Historical: Rev. St. 1887, Sec. 2900.
California Legislation: Same: Civ.

Code 1872, Sec. 1045; Deering's Code, ib.; Kerr's Code, ib.

Right of Re-Entry is Transferable.

Sec. 3098. A right of re-entry or of re-possession for breach of condition subsequent, can be transferred.

Historical: Rev. St. 1887, Sec. 2901.
California Legislation: Same: Civ.

Code 1872, Sec. 1046; Deering's Code, ib.; Kerr's Code, ib.

Transfer by Disseizee.

Sec. 3099. Any person claiming title to real property in the adverse possession of another, may transfer it with the same effect as if in actual possession.

Historical: Rev. St. 1887, Sec. 2902.
See 1 Ter. Ses. (1864) 528, Sec. 33.
California Legislation: Same: Civ.

Code 1872, Sec. 1047; Deering's Code, ib.; Kerr's Code, ib.

Oral Transfers.

Sec. 3100. A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

Historical: Rev. St. 1887, Sec. 2903.
California Legislation: Same: Civ.
Code 1872, Sec. 1052; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Transfers required to be in writing: Secs. 6007-6008.

Transfer in Writing: How Designated.

Sec. 3101. A transfer in writing is called a grant, or conveyance, or bill of sale.

Historical: Rev. St. 1887, Sec. 2904.	
California Legislation: Same except "or conveyance, or bill of sale" omit-	ted: Civ. Code 1872, Sec. 1053; additional provision as amended: Deering's Code, ib.; Kerr's Code, ib.

Words of Inheritance Not Required.

Sec. 3102. Words of inheritance or succession are not requisite to transfer a fee in real property.

Historical: Rev. St. 1887, Sec. 2905. See 1 Ter. Ses. (1864) 528, Sec. 43.	Code 1872, Sec. 1072; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same: Civ.	

Grant Effective on Death Without Heirs.

Sec. 3103. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

Historical: Rev. St. 1887, Sec. 2906. See 1 Ter. Ses. (1864) 528, Sec. 44.	Code 1872, Sec. 1071; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same: Civ.	

Co-Interests Deemed to Be in Common.

Sec. 3104. Every interest in real estate granted or devised to two or more persons, other than executors or trustees, as such constitutes a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

Historical: Rev. St. 1887, Sec. 2907.
1 Ter. Ses. (1864) 528, Sec. 42.

CHAPTER 2.
TRANSFER OF REAL PROPERTY.

Section	Section
3105. Conveyance: How made.	3115. Unauthorized grant by life tenant.
3106. Conveyance of homestead.	3116. Defeat of grant on condition subsequent.
3107. Conveyance by married woman.	3117. Grant on condition precedent.
3108. Same: Non-resident husband.	3118. Grant of rents, reversions or remainders.
3109. Same: Power of attorney.	3119. Grant of land bounded by highway.
3110. Conveyance by attorney in fact.	3120. Covenants implied from "grant".
3111. Easements pass with property.	3121. Incumbrance defined.
3112. Fee presumed to pass.	3122. Lineal and collateral warranties abolished.
3113. Acquisition of subsequent title by grantor.	
3114. Conclusiveness of conveyance: Bona fide purchasers.	

Conveyance: How Made.

Sec. 3105. A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Historical: Rev. St. 1887, Sec. 2920. See 1 Ter. Ses. (1864) 528, Sec. 1.

California Legislation: Similar: Civ. Code 1872, Sec. 1091; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Transfers of real

property must be in writing: Secs. 6007, 6008.

Cited: First Natl. Bank of Lewiston v. Williams (1890) 2 Ida. 670; 23 Pac. 552.

Conveyance of Homestead.

Sec. 3106. No estate in the homestead of a married person, or in any part of the community property occupied as a residence by a married person can be conveyed or incumbered by act of the party, unless both husband and wife join in the execution of the instrument by which it is so conveyed or incumbered, and it be acknowledged by the wife as provided in Chapter 3 of this Title.

Historical: Rev. St. 1887, Sec. 2921. See 13 Ter. Ses. (1885) 137, Secs. 1, 2, 3, 4.

California Legislation: See Civ. Code 1872, Sec. 1242; Deering's Code, ib.; Kerr's Code, ib.

Cited: N. W. & Pac. Hypotheek Bk. v. Rauch (1898) 5 Ida. 752; 51 Pac. 764; First Natl. Bk. of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623; Kurdy v. Rogers (1904) 10 Ida. 416; 79 Pac. 195.

Disposition of Homestead: The homestead occupied by husband and wife as a residence is common property of the marital community, and the husband cannot convey or encumber it so long as it continues to be the residence of himself and wife, without the consent of the wife in such conveyance, but it is in his power to change its character as a residence at any time without the consent or co-operation of the wife, and to then convey the same. Law v. Spence (1897) 5 Ida. 244; 48 Pac. 282.

Disclaimer by Husband: In an action against husband and wife relating to a water right appurtenant to real estate occupied by them as a res-

idence, a disclaimer filed therein by the husband does not affect the rights of the wife. Stowall v. Tucker (1900) 7 Ida. 312; 62 Pac. 1033.

Purchase Money Mortgages: Where a mortgage is executed by the husband on public land prior to making final proof and payment therefor, and the purchase money is paid from the sum realized from the mortgage, the land is not community property at the time of the execution of the mortgage, and the mortgage lien is prior to any right of the wife, although she did not join in the mortgage. Kneen v. Halin (1899) 6 Ida. 621; 59 Pac. 14.

Estoppel Against Wife: Where a husband and wife enter into an oral contract for the sale of their homestead, and the purchaser takes possession thereof and pays the purchase price and makes valuable improvements with the full knowledge and consent of the wife, the purchaser is entitled to a decree of conveyance, on the principle of estoppel, notwithstanding the provisions of this section. (Ailshie, J., dissents.) Grice v. Woodworth (1904) 10 Ida. 459; 80 Pac. 912.

Conveyance by Married Woman.

Sec. 3107. No estate in the real property of a married woman passes by any grant or conveyance purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed in Chapter 3 of this Title, and her husband, if a resident of the State, joins with her in the execution of such grant or conveyance.

Historical: Rev. St. 1887, Sec. 2922. See 8 Ter. Ses. (1875) 596, Secs. 2 and 3; also see 1 Ter. Ses. (1864) 528, Sec. 2; 4 Ter. Ses. (1867) 138, Secs. 1, 2.

California Legislation: Similar: Civ.

Code 1872, Sec. 1093; Deering's Code, ib.; different: Kerr's Code, ib.

Cited: N. W. & Pac. Hypotheek Bk. v. Rauch (1898) 5 Ida. 752; 51 Pac. 764; Grice v. Woodworth (1904) 10 Ida. 459; 80 Pac. 912.

Same: Non-Resident Husband.

Sec. 3108. If her husband has not been a bona fide resident of the State at any time within the year next preceding her conveyance, a married woman may convey her separate real property, or any inter-

est therein, by an instrument in writing, subscribed and acknowledged by her in the manner required by Chapter 3 of this Title.

Historical: Rev. St. 1887, Sec. 2923.
See 8 Ter. Ses. (1875) 596, Secs. 2, 3;
4 Ter. Ses. (1867) 138, Secs. 1, 2.

Same: Power of Attorney.

Sec. 3109. A power of attorney of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose until acknowledged by her in the manner provided in Chapter 3 of this Title, and her husband, if a resident of the State, join therein. But if her husband has not been a bona fide resident of the State at any time within one year next preceding the execution of the power, she may execute the same alone, as in the last section provided for the execution by her of conveyances when her husband is a non-resident.

Historical: Rev. St. 1887, Sec. 2924.
California Legislation: Similar in part: Civ. Code 1872, Sec. 1094; Deer-

ing's Code, ib.; different as amended: Kerr's Code, ib.

Conveyance By Attorney in Fact.

Sec. 3110. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

Historical: Rev. St. 1887, Sec. 2925.
California Legislation: Same: Civ.

Code 1872, Sec. 1095; Deering's Code, ib.; Kerr's Code, ib.

Easements Pass With Property.

Sec. 3111. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

Historical: Rev. St. 1887, Sec. 2926.
California Legislation: Same: Civ.

Code 1872, Sec. 1104; Deering's Code, ib.; Kerr's Code, ib.

Fee Presumed to Pass.

Sec. 3112. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

Historical: Rev. St. 1887, Sec. 2927.
See 1 Ter. Ses. (1864) 528, Sec. 43.
California Legislation: Same: Civ.

Code 1872, Sec. 1105; Deering's Code, ib.; Kerr's Code, ib.

Acquisition of Subsequent Title by Grantor.

Sec. 3113. Where a person purports by proper instrument to convey or grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors.

Historical: Rev. St. 1887, Sec. 2928.
See 1 Ter. Ses. (1864) 528, Sec. 32.
California Legislation: Same: Civ.

Code 1872, Sec. 1106; Deering's Code, ib.; Kerr's Code, ib.

Conclusiveness of Conveyance: Bona Fide Purchasers.

Sec. 3114. Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer, who in good faith, and for a valuable consideration, acquires a title or lien by an instrument that is first duly recorded.

Historical: Rev. St. 1887, Sec. 2929.

California Legislation: Same except "or conveyance", line 1, omitted: Civ.

Code 1872, Sec. 1107; Deering's Code, ib.; Kerr's Code, ib.

Unauthorized Grant by Life Tenant.

Sec. 3115. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

Historical: Rev. St. 1887, Sec. 2930.

California Legislation: Same: Civ.

Code 1872, Sec. 1108; Deering's Code, ib.; Kerr's Code, ib.

Defeat of Grant on Condition Subsequent.

Sec. 3116. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant duly acknowledged for record.

Historical: Rev. St. 1887, Sec. 2931.

California Legislation: Same: Civ.

Code 1872, Sec. 1109; Deering's Code, ib.; Kerr's Code, ib.

Grant on Condition Precedent.

Sec. 3117. An instrument purporting to be a grant of real property, to take effect upon condition precedent, does not pass the estate upon the performance of the condition. Such instrument is an executory contract for the conveyance of the property. Upon compliance with the condition, the grantee is entitled to a grant or conveyance, from the grantor or his successors, for the property, duly acknowledged for record.

Historical: Rev. St. 1887, Sec. 2932.

California Legislation: Similar: Civ.
Code 1872, Sec. 1110; different as

amended: Deering's Code, ib.; Kerr's Code, ib.

Grant of Rents, Reversions or Remainders.

Sec. 3118. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, has paid rent to the grantor, must suffer any damage thereby.

Historical: Rev. St. 1887, Sec. 2933.

1 Ter. Ses. (1864) 528, Sec. 47.

California Legislation: Same: Civ.

Code 1872, Sec. 1111; Deering's Code, ib.; Kerr's Code, ib.

Grant of Land Bounded by Highway.

Sec. 3119. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front, to the center thereof, unless a different intent appears from the grant.

Historical: Rev. St. 1887, Sec. 2934.

California Legislation: Same through "thereof", line 3, rest omitted.

ted: Civ. Code 1872, Sec. 1112; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Covenants Implied from "Grant."

Sec. 3120. From the use of the word "grant" in any conveyance by which an estate of inheritance, possessory right, or fee simple is to be passed, the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;
2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Historical: Rev. St. 1887, Sec. 2935. See 1 Ter. Ses. (1864) 528, Sec. 50.

California Legislation: Same except "possessory right", line 2, omitted: Civ. Code 1872, Sec. 1113; Deering's Code, ib.; Kerr's Code, ib.

Implied Covenants: The word "grant" in a conveyance is a covenant that the estate so conveyed is, at the

time of the execution thereof, free from encumbrances done, made or suffered by the grantor or any person claiming under him, but is not a warranty of title or a covenant of quiet enjoyment against encumbrances. Warren v. Stoddart (1899) 6 Ida. 692; 59 Pac. 540.

Incumbrance Defined.

Sec. 3121. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

Historical: Rev. St. 1887, Sec. 2936.

California Legislation: Similar with additional provisions: Civ. Code 1872,

Sec. 1114; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Lineal and Collateral Warranties Abolished.

Sec. 3122. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

Historical: Rev. St. 1887, Sec. 2937. 1 Ter. Ses. (1864) 528, Sec. 49.

California Legislation: Same: Civ.

Code 1872, Sec. 1115; Deering's Code. ib.; Kerr's Code, ib.

CHAPTER 3.

ACKNOWLEDGMENTS.

Section	Section
3123. By whom taken.	3128. Requisites for acknowledgment .
3124. Same: Continued.	3129. Acknowledgment by married woman.
3125. Same: Outside of State.	3130. Certificate of acknowledgment.
3126. Same: Outside United States.	3131. Same: Form.
3127. Acknowledgments before deputies.	

Section

3132. Same: Acknowledgment by corporation.
 3133. Same: Acknowledgment by attorney.
 3134. Authentication of certificate.
 3135. Certificate by justice: Authentication.
 3136. Proof of execution.
 3137. Identity of witness must be known or proven.
 3138. Proof of identity of grantor.
 3139. Proof of instrument by handwriting.
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Section

3141. Certificate of proof.
 3142. Authority of officers taking proof.
 3143. Correction of defective certificate.
 3144. Action to prove instrument.
 3145. Judgment entitles instrument to record.
 3146. Prior instruments not affected.
 3147. Same: Record of such instruments.
 3148. Same: Record as notice.

By Whom Taken.

Sec. 3123. The proof or acknowledgment of an instrument may be made at any place within this State, before a Justice or Clerk of the Supreme Court.

Historical: Rev. St. 1887, Sec. 2950. See 1 Ter. Ses. (1864) 528, Sec. 4.

California Legislation: Same: Civ. Code 1872, Sec. 1180; "or a judge of a superior court" added as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Judicial officers may take acknowledgments: Sec. 3913.

Cited: Bunnell & Eno etc. Co. v. Curtis (1897) 5 Ida. 652; 51 Pac. 767.

Same: Continued.

Sec. 3124. The proof or acknowledgment of an instrument may be made in this State within the city, county or district for which the officer was elected or appointed, before either:

1. A judge or clerk of a court of record; or,
2. A county recorder; or,
3. A notary public; or,
4. A justice of the peace.

Historical: Rev. St. 1887, Sec. 2951. See 1 Ter. Ses. (1864) 528, Sec. 4.

California Legislation: Similar: Civ.

Code 1872, Sec. 1181; as amended: Deering's Code, ib.; as further amended: Kerr's Code, ib.

Same: Outside of State.

Sec. 3125. The proof or acknowledgment of an instrument may be made without this State, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge or clerk of any court of record of the United States; or,
2. A justice, judge or clerk of any court of record of any State or Territory; or,
3. A commissioner appointed by the Governor of this State for that purpose; or,
4. A notary public; or,
5. Any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

Historical: Rev. St. 1887, Sec. 2952. See 1 Ter. Ses. (1864) 528, Sec. 4.

California Legislation: Same except

"or Territory" omitted, subds. 2, 5; Civ. Code 1872, Sec. 1182; Deering's Code, ib.; Kerr's Code, ib.

Same: Outside United States.

Sec. 3126. The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A Minister, Commissioner or Charge d'Affairs of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,
2. A Consul or Vice-Consul of the United States resident in the country where the proof or acknowledgment is made; or,
3. A judge of a court of record of the country where the proof or acknowledgment is made; or,
4. Commissioners appointed for such purposes by the Governor of the State pursuant to statute; or,
5. A notary public.

Historical: Rev. St. 1887, Sec. 2953.
1 Ter. Ses. (1864) 528, Sec. 4.

California Legislation: Same except "special statutes" for "statute", subd.

4: Civ. Code 1872, Sec. 1183; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Acknowledgments Before Deputies.

Sec. 3127. When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

Historical: Rev. St. 1887, Sec. 2954.
California Legislation: Same: Civ.

Code 1872, Sec. 1184; Deering's Code, ib.; Kerr's Code, ib.

Requisites for Acknowledgment.

Sec. 3128. The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in, and who executed, the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

Historical: Rev. St. 1887, Sec. 2955.
See 1 Ter. Ses. (1864) 528, Sec. 6.

California Legislation: Same: Civ. Code 1872, Sec. 1185; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Duty of Officer: An officer taking an acknowledgment is not required to

see the person sign the instrument nor to witness the instrument, but is required to ascertain whether or not the party acknowledges the instrument as his or her obligation or contract, and as having been executed by him or her. First Natl. Bk. of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623.

Acknowledgment by Married Woman.

Sec. 3129. The acknowledgment of a married woman to any instrument in writing shall be taken and certified to in the same manner and form as that of a single person, and must be substantially in the form prescribed by Section 3131.

Historical: Laws 1907, 5, Sec. 1.

Repeal: This section repeals Rev. St. Secs. 2956 and 2960. The repealed sections provide that "the acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken, un-

less she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument, and that she does not wish

to retract such execution", and prescribe a corresponding form of certificate:

Decisions construing the repealed sections are as follows:

2956—Cited: Christenson v. Hollingsworth (1898) 6 Ida. 87; 53 Pac. 211.

Conveyance of Husband: A conveyance of common property occupied by husband and wife is invalid, where none of the requirements of this section are complied with by the officer taking the acknowledgment. Wilson v. Wilson (1899) 6 Ida. 597; 57 Pac. 708.

Sufficiency of Acknowledgment: A certificate of acknowledgment which shows that the acknowledgment of the husband was taken separate and apart from the wife, and that the wife's acknowledgment was not taken separate and apart from the husband, is void. Co-op. Sav. & Loan Assoc. v. Green (1897) 5 Ida. 661; 51 Pac. 770.

Where the contents of an instrument are explained to a married woman and she states that it is all right with her if it is with her husband, and that whatever he does or says is all right, the notary is justified in attaching his certificate of acknowledgment thereto. First Natl. Bk. of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623.

Validity of Certificate: Where a certificate of acknowledgment is regular in form, its validity will be sustained in the absence of clear and convincing proof that the provisions of this section were not complied with. Gray v. Law (1899) 6 Ida. 559; 57 Pac. 435.

2960—Cited: Co-op. etc. Assoc. v. Green (1897) 5 Ida. 660; 51 Pac. 770; Gray v. Law (1899) 6 Ida. 559; 57 Pac. 435; First Natl. Bk. of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623.

Substantial Compliance Sufficient: The certificate of acknowledgment need not follow the exact words of the statute, but it is sufficient if it substantially complies therewith. Christensen v. Hollingsworth (1898) 6 Ida. 87; 53 Pac. 211; N. W. & Pac. Hypotheek Bk. v. Rauch (1898) 5 Ida. 752; 51 Pac. 764; Curtis v. Bunnell etc. Co. (1898) 6 Ida. 298; 55 Pac. 659.

A certificate stating that the notary apprised the wife of the contents of the instrument, of her rights, and of the effect of signing the same, and that she did then freely and voluntarily, separate and apart from her husband, sign and acknowledge said instrument, is sufficient. N. W. & Pac. Hypotheek Bk. v. Rauch (1898) 5 Ida. 752; 51 Pac. 754.

Certificate of Acknowledgment.

Sec. 3130. An officer taking the acknowledgment of an instrument must endorse thereon a certificate substantially in the forms hereinafter prescribed.

Historical: Rev. St. 1887, Sec. 2957. See 1 Ter. Ses. (1864) 528, Sec. 5.

California Legislation: Same: Civ. Code 1872, Sec. 1188; similar as amended: Deering's Code, ib.; Kerr's Code, ib.

Impeachment of Certificate: A notary may not testify to any fact tending to impeach a certificate of acknowledgment made by him. First Natl. Bk. of Hailey v. Glenn (1904) 10 Ida. 224; 77 Pac. 623.

Same: Form.

Sec. 3131. The certificate of acknowledgment, unless it is otherwise in this chapter provided, must be substantially in the following form:

State of Idaho, County of....., ss.

On this.....day of....., in the year of, before me (here insert the name and quality of the officer), personally appeared, known to me (or proved to me on the oath of), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

Historical: Rev. St. 1887, Sec. 2958. See 1 Ter. Ses. (1864) 528, Sec. 8.

California Legislation: Same except "article" for "chapter", line 2: Civ.

Code 1872, Sec. 1189; Deering's Code, ib.; additional provision as amended: Kerr's Code, ib.

Same: Acknowledgment by Corporation.

Sec. 3132. The certificate of acknowledgment of an instrument

executed by a corporation, must be substantially in the following form:

State of Idaho, County of....., ss.

On this.....day of, in the year....., before me (here insert the name and quality of the officer,) personally appeared, known to me (or proved to me on the oath of.....) to be the president (or the secretary) of the corporation that executed the instrument and acknowledged to me that such corporation executed the same.

Historical: Rev. St. 1887, Sec. 2959.

California Legislation: Same: Civ. Code 1872, Sec. 1190; Deering's Code,

ib.; similar with additional provision: Kerr's Code, ib.

Same: Acknowledgment by Attorney.

Sec. 3133. The certificate of acknowledgment by an attorney in fact, must be substantially in the following form:

State of Idaho, County of....., ss.

On this..... day of....., in the year....., before me, (here insert the name and quality of the officer) personally appeared, known to me (or proved to me on the oath of.....) to be the person whose name is subscribed to the within instrument as the attorney in fact of....., and acknowledged to me that he subscribed the name of..... thereto as principal, and his own name as attorney in fact.

Historical: Rev. St. 1887, Sec. 2961.

California Legislation: Same: Civ.

Code 1872, Sec. 1192; Deering's Code, ib.; Kerr's Code, ib.

Authentication of Certificate.

Sec. 3134. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the Territory, State, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Historical: Rev. St. 1887, Sec. 2962.

See 1 Ter. Ses. (1864) 528, Sec. 5.

California Legislation: Same except

"Territory", line 4, omitted: Civ. Code 1872, Sec. 1193; Deering's Code, ib.; Kerr's Code, ib.

Certificate by Justice: Authentication.

Sec. 3135. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the recorder of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the recorder is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

Historical: Rev. St. 1887, Sec. 2963.

California Legislation: Same except "clerk" for "recorder": Civ. Code 1872,

Sec. 1194; Deering's Code, ib.; Kerr's Code, ib.

Proof of Execution.

Sec. 3136. Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the parties executing it, or either of them; or,
2. By a subscribing witness; or,
3. By other witnesses in the cases hereinafter mentioned.

Historical: Rev. St. 1887, Sec. 2964.
See 1 Ter. Ses. (1864) 528, Sec. 10.

California Legislation: Same except
"in cases mentioned in Section 1198"

for "in the cases hereinafter mentioned", subd. 3: Civ. Code 1872, Sec. 1195; Deering's Code, ib.; Kerr's Code, ib.

Identity of Witness Must Be Known or Proven.

Sec. 3137. If by a subscribing witness, such witness must be personally known to the officer taking the proof, to be the person whose name is subscribed to the instrument, as a witness, or must be proved to be such, by the oath of a credible witness.

Historical: Rev. St. 1887, Sec. 2965;
1 Ter. Ses. (1864) 528, Sec. 11.

California Legislation: Same: Civ.

Code, 1872, Sec. 1196; Deering's Code, ib.; Kerr's Code, ib.

Proof of Identity of Grantor.

Sec. 3138. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party, is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

Historical: Rev. St. 1887, Sec. 2966.
See 1 Ter. Ses. (1864) 528, Sec. 12.

California Legislation: Same: Civ.

Code 1872, Sec. 1197; Deering's Code, ib.; Kerr's Code, ib.

Proof of Instrument by Handwriting.

Sec. 3139. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead;
or,

2. When the parties and all the subscribing witnesses are non-residents of the State; or,

3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

4. When the subscribing witness conceals himself or cannot be found by the officer, by the exercise of due diligence, in attempting to serve the subpoena or attachment; or,

5. In case of the continued failure or refusal of the witness to testify for the space of one hour, after his appearance.

Historical: Rev. St. 1887, Sec. 2967.
See 1 Ter. Ses. (1864) 528, Sec. 14.

California Legislation: Same: Civ.

Code, 1872, Sec. 1198; Deering's Code, ib.; Kerr's Code, ib.

Same: What Evidence Must Prove.

Sec. 3140. The evidence taken under the preceding section, must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness; and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness.

Historical: Rev. St. 1887, Sec. 2968.
See 1 Ter. Ses. (1864) 528, Sec. 15.

California Legislation: Same with

additional subdivision: Civ. Code 1872, Sec. 1199; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Certificate of Proof.

Sec. 3141. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

Historical: Rev. St. 1887, Sec. 2969.

California Legislation: Same: Civ.

Code 1872, Sec. 1200; Deering's Code, ib.; Kerr's Code, ib.

Authority of Officers Taking Proof.

Sec. 3142. Officers authorized to take the proof of instruments, are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in the Code of Civil Procedure;

2. To employ and swear interpreters;

3. To issue subpoenas, as prescribed in the Code of Civil Procedure;

4. To punish for contempt as prescribed in the Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in the Code of Civil Procedure for a witness disobeying a subpoena.

Historical: Rev. St. 1887, Sec. 2970.
See 1 Ter. Ses. (1864) 528, Secs. 16 and 17.

California Legislation: Similar: Civ. Code 1872, Sec. 1201; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Issuance of subpoena: Sec. 6036. Civil damages and forfeiture for disobedience: Sec. 6042. Punishment for contempt: Secs. 5155-5168.

Correction of Defective Certificate.

Sec. 3143. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the District Court to obtain a judgment correcting the certificate.

Historical: Rev. St. 1887, Sec. 2971.
California Legislation: Same: Civ. Code 1872, Sec. 1202; Deering's Code, ib.; "Superior" for "District" Court as amended: Kerr's Code, ib.

Application: This section refers to all defective certificates of acknowledgment, whether made by a married or single person. *Bunnell & Eno Inv. Co. v. Curtis* (1897) 5 Ida. 652; 51 Pac. 767.

Time for Correction: Where a certificate of acknowledgment or a declaration of homestead is fatally defective, the homestead claimant can have the same reformed after a sale of the homestead on execution, so as to preserve the homestead for the claimant as against the execution purchaser. *Burbank v. Kirby* (1898) 6 Ida. 210; 55 Pac. 295.

Action to Prove Instrument.

Sec. 3144. Any person interested under an instrument entitled to be proved for record, may institute an action in the District Court against the proper parties to obtain a judgment proving such instrument.

Historical: Rev. St. 1887, Sec. 2972.

ib.; "Superior" for "District" Court as amended: Kerr's Code, ib.

California Legislation: Same: Civ. Code 1872, Sec. 1203; Deering's Code,

Judgment Entitles Instrument to Record.

Sec. 3145. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged.

Historical: Rev. St. 1887, Sec. 2973.

Code 1872, Sec. 1204; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Prior Instruments Not Affected.

Sec. 3146. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this Code goes into effect, executed, acknowledged, proved, or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

Historical: Rev. St. 1887, Sec. 2974.
See 1 Ter. Ses. (1864) 528, Sec. 41.

Code 1872, Sec. 1205; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Same: Record of Such Instruments:

Sec. 3147. All conveyances of real property made before this Code goes into effect, and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this chapter.

Historical: Rev. St. 1887, Sec. 2975.
See 1 Ter. Ses. (1864) 528, Sec. 40.

Code 1872, Sec. 1206; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Same: Record as Notice.

Sec. 3148. Any instrument affecting the title to real property which heretofore or on or before sixty days after the adjournment of the Legislature of the State of Idaho for 1909, is copied into the proper book of record, kept in the office of any county recorder, imparts notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof; but nothing herein affects the rights of previous purchasers or incumbrancers. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded, provided it be first shown that the original instrument was genuine.

Historical: Rev. St. 1887, Sec. 2976; amended Laws 1907, 28, Sec. 1. "1909" inserted for "1907". This is a general curative provision, common to many codes, and should be made to refer to the present Code, rather than to the laws of 1907. Hence the change.

California Legislation: Similar: Deering's Civ. Code, Sec. 1207; as amended: Kerr's Code, ib.

Cited: Bunnell & Eno Inv. Co. v. Curtis (1897) 5 Ida. 652; 51 Pac. 767.

CHAPTER 4.

RECORDING TRANSFERS.

Section	Section
3149. What may be recorded.	3157. When deemed recorded.
3150. Recording judgments.	3158. Books of record.
3151. United States patents.	3159. Record as notice.
3152. Notices of location.	3160. Unrecorded conveyance void.
3153. Acknowledgment necessary to authorize record.	3161. Conveyance defined.
3154. Power must be recorded before conveyance by attorney.	3162. Revocation of power to be recorded.
3155. Recorder's fees to be indorsed.	3163. Unrecorded instruments valid between parties.
3156. Place of record.	

Note: For books of record, manner of recording, and indexes, see Secs. 2061-2078. Fees of recorder: Sec. 2124.

What May Be Recorded.

Sec. 3149. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

Historical: Rev. St. 1887, Sec. 2990.

California Legislation: Same: Civ.

Code 1872, Sec. 1158; Deering's Code, ib.; Kerr's Code, ib.

Recording Judgments.

Sec. 3150. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

Historical: Rev. St. 1887, Sec. 2991.

California Legislation: Same: Civ.

Code 1872, Sec. 1159; Deering's Code,

ib.; additional provision as amended: Kerr's Code, ib.

United States Patents.

Sec. 3151. Letters patent from the United States executed and authenticated pursuant to existing law, may be recorded without further proof.

Historical: Rev. St. 1887, Sec. 2992.

California Legislation: Similar: Civ.

Code 1872, Sec. 1160; as amended: Deering's Code, ib.; Kerr's Code, ib.

Notices of Location.

Sec. 3152. Certificates and notices of location authorized by law, with the affidavits attached, may be recorded without acknowledgment or further proof.

Historical: Rev. St. 1887, Sec. 2993.

California Legislation: See Kerr's Civ. Code, Sec. 1159.

Acknowledgment Necessary to Authorize Record.

Sec. 3153. Before an instrument may be recorded, unless it is

otherwise expressly provided, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or proved, and the acknowledgment or proof certified in the manner prescribed by Chapter 3 of this Title: *Provided*, That if such instrument shall have been executed and acknowledged in any other State or Territory of the United States, or in any foreign country, according to the laws of the State, Territory or country wherein such acknowledgment was taken, the same shall be entitled to record, and a certificate of acknowledgment indorsed upon or attached to any such instrument purporting to have been made in any such State, Territory or foreign country, shall be prima facie sufficient to entitle the same to such record.

Historical: Rev. St. 1887, Sec. 2994; amended Laws 1907, 6, Sec. 1. The amendment consisted in adding the proviso.

California Legislation: See Civ. Code 1872, Sec. 1161; Deering's Code, ib.; as amended: Kerr's Code, ib.

Power Must Be Recorded Before Conveyance by Attorney.

Sec. 3154. An instrument executed by an attorney in fact must not be recorded until the power of attorney authorizing the execution of the instrument is filed for record in the same office.

Historical: Rev. St. 1887, Sec. 2995.

California Legislation: Same: Civ. Code 1872, Sec. 1163; repealed 1874.

Recorder's Fees to Be Indorsed.

Sec. 3155. The recorder must in all cases indorse the amount of his fee on the instrument recorded, and on the record thereof.

Historical: Rev. St. 1887, Sec. 2996.

California Legislation: See Civ.

Code 1872, Sec. 1172; Deering's Code, ib.; Kerr's Code, ib.

Place of Record.

Sec. 3156. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated.

Historical: Rev. St. 1887, Sec. 2997. See 1 Ter. Ses. (1864) 528, Sec. 23.

California Legislation: Same: Civ.

Code 1872, Sec. 1169; Deering's Code, ib.; Kerr's Code, ib.

When Deemed Recorded.

Sec. 3157. An instrument is deemed to be recorded when, being duly acknowledged, or proved and certified, it is deposited in the recorder's office with the proper officer for record.

Historical: Rev. St. 1887, Sec. 2998.

California Legislation: Similar: Civ. Code 1872, Sec. 1170; same as amend-

ed: Deering's Code, ib.; Kerr's Code, ib.

Books of Record.

Sec. 3158. Grants and conveyances absolute in terms, are to be recorded in one set of books, and mortgages in another.

Historical: Rev. St. 1887, Sec. 2999.

California Legislation: Same except "and conveyances" omitted: Civ. Code

1872, Sec. 1171; Deering's Code, ib.; Kerr's Code, ib.

Record as Notice.

Sec. 3159. Every conveyance of real property, acknowledged or proved, and certified, and recorded as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Historical: Rev. St. 1887, Sec. 3000.
See 1 Ter. Ses. (1864) 528, Sec. 24.

California Legislation: Same: Civ.

Code 1872, Sec. 1213; Deering's Code, ib.; additional provision as amended: Kerr's Code, ib.

Unrecorded Conveyance Void.

Sec. 3160. Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Historical: Rev. St. 1887, Sec. 3001.
See 1 Ter. Ses. (1864) 528, Sec. 25.

California Legislation: Same: Civ. Code 1872, Sec. 1214; Deering's Code, ib.; similar as amended: Kerr's Code, ib.

Bona Fide Purchasers: One who has notice or knowledge of a previous sale of real property, or who has notice or knowledge of such facts and circumstances as would lead a reasonably prudent man to discover that a previous sale had been made, is not

a purchaser in good faith within the meaning of this section: but one who purchases vacant property and procures an abstract of title which fails to show a previous conveyance, because the same was not recorded, and pays the purchase price without any knowledge of such previous conveyance, is a purchaser in good faith, and is entitled to the property as against the holder of the prior unrecorded deed. *Froman v. Madden* (1907) 13 Ida.; 88 Pac. 894.

Conveyance Defined.

Sec. 3161. The term "conveyance" as used in this chapter, embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged or incumbered, or by which the title to any real property may be affected, except wills.

Historical: Rev. St. 1887, Sec. 3002.
See 1 Ter. Ses. (1864) 528, Sec. 35.

California Legislation: Same except "Sections 1213 and 1214" for "this

chapter," line 1: Civ. Code 1872, Sec. 1215; Deering's Code, ib.; Kerr's Code ib.

Revocation of Power to Be Recorded.

Sec. 3162. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

Historical: Rev. St. 1887, Sec. 3003.
See 1 Ter. Ses. (1864) 528, Sec. 27.

California Legislation: Same: Civ.

Code 1872, Sec. 1216; Deering's Code, ib.; Kerr's Code, ib.

Unrecorded Instruments Valid Between Parties.

Sec. 3163. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

Historical: Rev. St. 1887, Sec. 3004.
See 1 Ter. Ses. (1864) 528, Sec. 23.

California Legislation: Same: Civ.

Code 1872, Sec. 1217; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 5.

UNLAWFUL TRANSFERS.

Section		Section
3164.	Fraudulent conveyances of land.	3169. Transfers in fraud of creditors.
3165.	Grantee must be privy to fraud.	3170. Same: Delivery and change of possession.
3166.	Power of revocation: When deemed executed.	3171. Fraud is a question of fact.
3167.	Same.	3172. Title of purchaser not impaired.
3168.	Fraudulent transfers of personalty.	

Note: Restrictions on sales of goods in bulk: Secs. 3332-3335.

Fraudulent Conveyances of Land.

Sec. 3164. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

Historical: Rev. St. 1887, Sec. 3015.
See 1 Ter. Ses. (1864) 540, Sec. 1.

Code 1872, Sec. 1227; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same Civ.

Grantee Must Be Privy to Fraud.

Sec. 3165. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

Historical: Rev. St. 1887, Sec. 3016.
See 1 Ter. Ses. (1864) 540, Sec. 2.

Code 1872, Sec. 1228; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Power of Revocation: When Deemed Executed.

Sec. 3166. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

Historical: Rev. St. 1887, Sec. 3017.
See 1 Ter. Ses. (1864) 540, Sec. 4.

Code 1872, Sec. 1229; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Same.

Sec. 3167. Where a person having the power of revocation within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

Historical: Rev. St. 1887, Sec. 3018. See 1 Ter. Ses. (1864) 540, Sec. 5.

California Legislation: Same: Civ.

Code 1872, Sec. 1230; Deering's Code, ib.; Kerr's Code, ib.

Fraudulent Transfers of Personality.

Sec. 3168. All deeds of gift, all conveyances and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, are void as against the creditors, existing or subsequent, of such person.

Historical: Rev. St. 1887, Sec. 3019. 1 Ter. Ses. (1864) 540, Sec. 11.

California Legislation: See Civ. Code 1872, Sec. 1231; Deering's Code, ib.; Kerr's Code, ib.

Void Transfers: An assignment in trust to secure a certain creditor by permitting him to keep sufficient proceeds to pay his debts, accompanied by a contemporaneous parol agreement, that any excess of such pro-

ceeds above the amount sufficient to pay the creditor shall belong to the grantor, is void as against creditors of the grantor. *Johnson v. Sage* (1896) 4 Ida. 758; 44 Pac. 641.

Valid Transfers: A conveyance made by a decedent to his daughter, without intent to defraud and not in trust, does not come under the provisions of this section. *Brown v. Perrault* (1898) 5 Ida. 728; 51 Pac. 752.

Transfers in Fraud of Creditors.

Sec. 3169. Every transfer of property, or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Historical: Rev. St. 1887, Sec. 3020. See 1 Ter. Ses. (1864) 540, Sec. 18.

California Legislation: Same: Civ. Code 1872, Sec. 3439; Deering's Code, ib.; Kerr's Code, ib.

Void Transfers: An assignment of property made partly for the reason that the assignor feels that his creditors may levy on the proceeds of the property, is void as against creditors of the assignor. *Johnson v. Sage* (1896) 4 Ida. 758; 44 Pac. 641. If a

transfer is made with intent to evade payment of debts and such intent is known to the transferee, such transfer is void. *Sears v. Lydon* (1897) 5 Ida. 358; 49 Pac. 122.

Same—Evidence: Under this section a great latitude of inquiry on the issue of fraud is permissible, and any facts which tend to prove an intent to delay or defraud a creditor, are pertinent and proper. *Harkness v. Smith* (1891) 3 Ida. 221; 28 Pac. 423.

Same: Delivery and Change of Possession.

Sec. 3170. Every transfer of personal property other than a thing in action, and every lien thereon, other than a mortgage when allowed by law, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Historical: Rev. St. 1887, Sec. 3021. See 1 Ter. Ses. (1864) 540, Sec. 15.

California Legislation: Similar: Civ. Code 1872, Sec. 3440; Deering's Code, ib.; additional provisions as amended: Kerr's Code, ib.

Cited: *Brown v. Perrault* (1898) 5 Ida. 728; 51 Pac. 752.

Application: Where the property is not at the time of the sale in the possession or under the control of the vendor, this section has no applica-

tion. *Cornwell v. Mix* (1893) 3 Ida. 687; 34 Pac. 893.

Scope of Inquiry: The sole inquiry in this case is whether there has been an immediate delivery followed by actual and continued change of possession. No question of intent, bona fides or notice is relevant. *Harkness v. Smith* (1891) 3 Ida. 221; 28 Pac. 423.

Sufficiency of Delivery: No fixed rule can be established as a test for determining what the "immediate delivery" or "actual possession" required by the statute mean, but the questions are matters of fact to be determined by the jury from the evidence in each particular case. *Simons v. Daly* (1903) 9 Ida. 87; 72 Pac. 507. The statute does not refer to the place where the goods are situated, but to actual and continual change of possession, and does not require the goods sold to be removed in all cases from the place where situated when sold. *Hazard v. Cole* (1869) 1 Ida. 276.

Where the property is at the time of sale in the custody of a third person, and the sale is made in good faith, notice to the third person is sufficient to constitute a delivery. *Lufkins v. Collins* (1886) 2 Ida. 150; 7 Pac. 95.

Where horses pledged to secure a debt are at the time of the pledge in the possession of a third person who was to range the same for the winter, and the pledger tells such third person in the presence of all the parties, to hold them for the pledgee, and such person takes the horses to the range and delivers them to the pledgee in the spring, the latter paying for their care during the winter, there is a sufficient delivery and change of possession to satisfy the statute. *Murphy v. Braase* (1893) 3 Ida. 544; 32 Pac. 208.

A worked on the ranch for B and had a room in B's house in town. B gave A a cream separator in settlement of a debt. A removed the separator from the ranch to his room in B's house. Held, that there was a sufficient delivery and change of possession. *Rapple v. Hughes* (1904) 10 Ida. 338; 77 Pac. 722.

Effect of Retaking: Where there is an actual sale and delivery with change of possession, the subsequent act of the prior owner in wrongfully taking possession of the property does not defeat the purchaser's title as against a subsequent purchaser. *Couch v. Montgomery* (1899) 6 Ida. 669; 59 Pac. 16. But where property, without legal excuse, is replaced in the same apparent relation to the vendor after delivery, and there is no manifest and continued change of possession, the transfer is void. *Harkness v. Smith* (1891) 3 Ida. 221; 28 Pac. 423.

Insufficient Delivery: Where the assignor retains the property under the same control and management, the assignment is void as against creditors. *Johnson v. Sage* (1896) 4 Ida. 758; 44 Pac. 641.

L sold a quantity of wheat to H and M; before delivery or change of possession thereof, and twenty days after the sale, the wheat was levied upon under an execution issued in an action against L. Held, that the sale to H and M was void as to creditors. *Hallett v. Parrish* (1897) 5 Ida. 496; 51 Pac. 109.

Where a tenant holds personal property on the demised premises for his landlord and the latter assigns the same to a third person, who leaves it on the demised premises for the tenant to hold until a certain day, and the property is seized upon an execution before that day, there is, at the time of the execution, no such delivery and change of possession as to vest title in the third person. *Coombs v. Collins* (1899) 6 Ida. 536; 57 Pac. 310.

Seizure Under Attachment: An officer sued for wrongfully seizing property under an invalid writ of attachment, may protect himself from being mulcted in exemplary damages, by showing that the goods seized under the writ were recently in the possession of the defendant, and that there was no such change of possession as is required by this section. *Sears v. Lydon* (1897) 5 Ida. 358; 49 Pac. 122.

Fraud is a Question of Fact.

Sec. 3171. In all cases arising under the provisions of this title, except as otherwise provided in the last section, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

Historical: Rev. St. 1887, Sec. 3022. 1 Ter. Ses. (1864) 540, Sec. 20.

California Legislation: Similar: Civ. Code 1872; Sec. 3443; Deering's Code, ib.; additional provisions as amended: Kerr's Code, ib.

Cited: *Brown v. Perrault* (1898) 5 Ida. 728; 51 Pac. 752.

Question of Fact: The determination of what constitutes immediate change of possession and delivery is purely a question of fact to be de-

terminated by the jury, or the court in case a jury is waived, from all the evidence in the particular case. *Rap-ple v. Hughes* (1904) 10 Ida. 338; 77 Pac. 722.

The intent with which a transfer in fraud of creditors is made, is not established so much by attempting to ascertain the actual intent in the mind of the debtor, but rather by the facts

and circumstances under which the transfer was made, and from which the law imputes a fraudulent motive. *California etc. Min. Co. v. Manley* (1905) 10 Ida. 786; 81 Pac. 50.

Voluntary Transfers: A conveyance made for a mere nominal consideration, when attacked as fraudulent, will be subjected to the rules applicable to voluntary transfers. *Ib.*

Title of Purchaser Not Impaired.

Sec. 3172. The provisions of this chapter do not in any manner affect or impair the title of a purchaser for a valuable consideration unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Historical: Rev. St. 1887, Sec. 3023. 1 Ter. Ses. (1864) 540, Sec. 21.

Bona Fide Transfers: The transfer of stock by a married woman, as authorized by Rev. St. Sec. 2612, although procured by duress and coer-

cion on the part of her husband, is good where the transferee is a bona fide holder for value, without notice or knowledge of such duress or coercion. *Bryan v. Montandon* (1898) 6 Ida. 352; 55 Pac. 650.

TITLE 7

HOMESTEADS

Chapter

1. General provisions.
2. Sale of the homestead on execution.

Chapter

3. Homestead of the head of a family.
4. Homestead of other persons.

CHAPTER 1.

GENERAL PROVISIONS.

Section

3173. Definition of homestead.
3174. From what property selected.
3175. Same: From separate property of wife.
3176. Exemption from execution.

Section

3177. Same: To what judgments subject.
3178. Conveyance of homestead.
3179. Abandonment of homestead.
3180. Same: When effectual.

Note: Proceedings in probate court for setting aside homestead: Secs. 5440-5453. Assignment of homestead on dissolution of marriage: Sec. 2670.

Definition of Homestead.

Sec. 3173. The word homestead as used in this title includes within its meaning: The dwelling house in which the claimant resides, and the land on which the same is situated and located as in this title provided; also the proceeds thereof in the event of a voluntary sale, and also the insurance thereon, if any, in the event of a loss.

Historical: Laws 1897, 10, Sec. 1; re-enacted Laws 1899, 293, Sec. 1, inserting Sec. 3060 in Rev. St. 1887. The insertion was unnecessary as the section supersedes Rev. St. Sec. 3035, which defined a homestead as "the dwelling house in which the claimant resides, and the land on which the same is situated, selected as in this title provided."

California Legislation: See Civ. Code 1872, Sec. 1237; similar

'through "provided" as amended: Deering's Code, ib.; Kerr's Code, ib.

Exemption in Hotel: The fact that the homestead is occupied in whole or in part as a hotel, does not deprive it of any of the immunities prescribed by the statute, so long as it is used and occupied by the owner as a home and residence of himself and family, and it is within the limitations of the statute as to value. *Kissel v. Clemens* (1899) 6 Ida. 444; 56 Pac. 84.

From What Property Selected.

Sec. 3174. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married, but is the head of a family, the homestead may be selected from any of his or her property.

Historical: Rev. St. 1887, Sec. 3036.

California Legislation: Different: Civ. Code 1872, Sec. 1238; same as amended except "within the meaning

of section twelve hundred and sixty-one" inserted after "family": Deering's Code, ib.; Kerr's Code, ib.

Same: From Separate Property of Wife.

Sec. 3175. The homestead cannot be selected from the separate

property of the wife without her consent, shown by her making the declaration of homestead.

Historical: Rev. St. 1887, Sec. 3037.

California Legislation: Similar: Civ. Code 1872, Sec. 1239; same as amend-

ed except "or joining in making" inserted after "making," line 2; Deering's Code, ib.; Kerr's Code, ib.

Exemption From Execution.

Sec. 3176. The homestead is exempt from execution or forced sale, except as in this title provided.

Historical: Rev. St. 1887, Sec. 3038. See 1 Ter. Ses. (1864) 575, Sec. 1.

California Legislation: Same: Civ. Code 1872, Sec. 1240; Deering's Code, ib.; Kerr's Code, ib.

Cited: Wright v. Westheimer (1891) 3 Ida. 232; 28 Pac. 430.

Same: To What Judgments Subject.

Sec. 3177. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the filing of such declaration;

2. On debts secured by mechanic's, laborer's or vendor's liens upon the premises;

3. On debts secured by mortgages upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant;

4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record.

Historical: Rev. St. 1887, Sec. 3039. See 1 Ter. Ses. (1864) 575, Sec. 2.

California Legislation: Similar: Civ. Code 1872, Sec. 1241; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Cited: Wright v. Westheimer (1891) 3 Ida. 232; 28 Pac. 430.

Lien Against Homestead: A judgment lien is not divested by the act of the defendant or his wife in subsequently filing a declaration of homestead on the premises subject to the

lien. Smith v. Richards (1889) 2 Ida. 498; 21 Pac. 419.

Where a homestead is sold and the proceeds invested in another home, an attachment levied on the new home prior to filing declaration of homestead covering the new home, is effectual to create a lien thereon. Wright v. Westheimer (1891) 3 Ida. 232; 28 Pac. 430.

A mortgage lien cannot be defeated by a declaration of homestead made after the lien attaches. Law v. Spence (1897) 5 Ida. 244; 48 Pac. 282.

Conveyance of Homestead.

Sec. 3178. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

Historical: Rev. St. 1887, Sec. 3040. See 1 Ter. Ses. (1864) 575, Sec. 2.

California Legislation: Same: Civ. Code 1872, Sec. 1242; Deering's Code, ib.; Kerr's Code, ib.

Rule of Evidence: This and the following sections are in the nature of

rules of evidence and are subject to the same principles as the statute of frauds, and the rules of equitable estoppel and waiver apply to oral sales of the homestead. Grice v. Woodworth (1904) 10 Ida. 459; 80 Pac. 912.

Abandonment of Homestead.

Sec. 3179. A homestead can be abandoned only by a declaration

of abandonment, or a grant or conveyance thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married;
2. By the claimant, if unmarried.

Historical: Rev. St. 1887, Sec. 3041. See 1 Ter. Ses. (1864) 575, Sec. 2.

California Legislation: Same except "or conveyance", line 2, omitted: Civ. Code 1872, Sec. 1243; Deering's Code, ib.; Kerr's Code, ib.

Cited: Wright v. Westheimer (1891) 3 Ida. 232; 28 Pac. 430; Bedal v. Sake (1904) 10 Ida. 270; 77 Pac. 638. Grice

v. Woodworth (1904) 10 Ida. 459; 80 Pac. 912.

Ineffectual Conveyance: An attempted conveyance of a homestead made by one spouse without the other joining therein, is ineffectual to constitute abandonment. Mellen v. McManis (1904) 9 Ida. 418; 75 Pac. 98.

Same: When Effectual.

Sec. 3180. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

Historical: Rev. St. 1887, Sec. 3042. **California Legislation:** Same: Civ.

Code 1872, Sec. 1244; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 2.

SALE OF THE HOMESTEAD ON EXECUTION.

Section

- 3181. Execution against homestead.
- 3182. Application for appraisement.
- 3183. Filing of application.
- 3184. Notice of hearing.
- 3185. Appointment of appraisers.
- 3186. Oath of appraisers.
- 3187. Appraisal.
- 3188. Report of appraisers.

Section

- 3189. Order setting aside exempt portion.
- 3190. Order for sale of premises.
- 3191. Bid must exceed exemption.
- 3192. Disposal of proceeds of sale.
- 3193. Same: Exemption of proceeds.
- 3194. Compensation of appraisers.
- 3195. Costs of proceedings.

Execution Against Homestead.

Sec. 3181. When an execution for the enforcement of a judgment, obtained in a case not within the classes before enumerated, is levied upon the homestead, the judgment creditor may apply to the probate judge of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

Historical: Rev. St. 1887, Sec. 3043. See 1 Ter. Ses. (1864) 575, Sec. 3.

California Legislation: Same except "in section 1241" inserted after

"enumerated," line 2, and "county" for "probate," line 3; Civ. Code 1872, Sec. 1245; similar as amended: Kerr's Code, ib.

Application for Appraisement.

Sec. 3182. The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead;
2. The name of the claimant;
3. That the value of the homestead exceeds the amount of the homestead exemption.

Historical: Rev. St. 1887, Sec. 3044. See 1 Ter. Ses. (1864) 575, Sec. 3.

California Legislation: Same: Civ.

Code 1872, Sec. 1246; Deering's Code, ib.; Kerr's Code, ib.

Filing of Application.

Sec. 3183. The petition must be filed with the clerk of the probate court.

Historical: Rev. St. 1887, Sec. 3045.
California Legislation: Same except
"county" for "probate": Civ. Code

1872, Sec. 1247; "superior court" as
amended: Deering's Code, ib.; Kerr's
Code, ib.

Notice of Hearing.

Sec. 3184. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing.

Historical: Rev. St. 1887, Sec. 3046.
California Legislation: Same: Civ.

Code 1872, Sec. 1248; Deering's Code,
ib.; Kerr's Code, ib.

Appointment of Appraisers.

Sec. 3185. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

Historical: Rev. St. 1887, Sec. 3047.
See 1 Ter. Ses. (1864) 575, Sec. 3.

California Legislation: Same: Civ.

Code 1872, Sec. 1249; Deering's Code,
ib.; Kerr's Code, ib.

Oath of Appraisers.

Sec. 3186. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

Historical: Rev. St. 1887, Sec. 3048.
California Legislation: Same: Civ.

Code 1872, Sec. 1250; Deering's Code,
ib.; Kerr's Code, ib.

Appraisal.

Sec. 3187. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

Historical: Rev. St. 1887, Sec. 3049.
See 1 Ter. Ses. (1864) 575, Sec. 3.

California Legislation: Same: Civ.

Code 1872, Sec. 1251; Deering's Code,
ib.; Kerr's Code, ib.

Report of Appraisers.

Sec. 3188. Within ten days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

Historical: Rev. St. 1887, Sec. 3050.
See 1 Ter. Ses. (1864) 575, Sec. 3.

California Legislation: Same except

"fifteen" for "ten", line 1; Civ. Code
1872, Sec. 1252; Deering's Code, ib.;
Kerr's Code, ib.

Order Setting Aside Exempt Portion.

Sec. 3189. If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead ex-

emption, and the execution may be enforced against the remainder of the land.

Historical: Rev. St. 1887, Sec. 3051.
See 1 Ter. Ses. (1864) 575, Sec. 3.

Code 1872, Sec. 1253; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Order for Sale of Premises.

Sec. 3190. If, from the report, it appear to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution.

Historical: Rev. St. 1887, Sec. 3052.
1 Ter. Ses. (1864) 575, Sec. 3.

Code 1872, Sec. 1254; Deering's Code, ib.; Kerr's Code, ib. *

California Legislation: Same: Civ.

Bid Must Exceed Exemption.

Sec. 3191. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

Historical: Rev. St. 1887, Sec. 3053.
See 1 Ter. Ses. (1864) 575, Sec. 3.

Code 1872, Sec. 1255; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Disposal of Proceeds of Sale.

Sec. 3192. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

Historical: Rev. St. 1887, Sec. 3054.
See 1 Ter. Ses. (1864) 575, Sec. 3.

Code 1872, Sec. 1256; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Same: Exemption of Proceeds.

Sec. 3193. The money paid to the claimant is entitled for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

Historical: Rev. St. 1887, Sec. 3055.
See 1 Ter. Ses. (1864) 575, Sec. 3.

after" omitted and "all the" for "the same", line 2: Civ. Code 1872, Sec. 1257; same as amended: Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same except "for the period of six months there-

Compensation of Appraisers.

Sec. 3194. The court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

Historical: Rev. St. 1887, Sec. 3056.

Code 1872, Sec. 1258; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Costs of Proceedings.

Sec. 3195. The execution creditor must pay the costs of these proceedings in the first instance; but if the appraised value exceeds the homestead exemption the amount so paid must be added as costs on execution, and collected accordingly.

Historical: Rev. St. 1887, Sec. 3057.

Code 1872, Sec. 1259; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Similar: Civ.

CHAPTER 3.

HOMESTEAD OF THE HEAD OF A FAMILY.

Section

3196. Value of homestead.
 3197. Head of family defined.
 3198. Mode of selection.

Section

3199. Contents of declaration.
 3200. Declaration must be recorded.
 3201. Declaration of homestead.

Value of Homestead.

Sec. 3196. Homesteads may be selected and claimed:

1. Of not exceeding five thousand dollars in value by any head of a family;
2. Of not exceeding one thousand dollars in value by any other person.

Historical: Rev. St. 1887, Sec. 3058.
 See 1 Ter. Ses. (1864) 575, Sec. 1.

Code 1872, Sec. 1260; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Head of Family Defined.

Sec. 3197. The phrase "head of a family," as used in this title includes within its meaning:

First. The husband or wife when the claimant is a married person;

Second. Every person who has resided on the premises with him or her and under his or her care and maintenance either:

1. His or her minor child, or the minor child of his or her deceased wife or husband;
2. A minor brother or sister, or the minor child of a deceased brother or sister;
3. A father, mother, grandfather or grandmother;
4. The father, mother, grandfather or grandmother of a deceased husband or wife;
5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority, and are unable to take care of or support themselves.

Historical: Rev. St. 1887, Sec. 3059.
 See 1 Ter. Ses. (1864) 575, Sec. 4.

amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

California Legislation: Same: Civ.
 Code 1872, Sec. 1261; similar as

Cited: Mellen v. McMannis (1904) 9 Ida. 418; 75 Pac. 98.

Mode of Selection.

Sec. 3198. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a conveyance of real property is acknowledged, a declaration of homestead, and file the same for record.

Historical: Rev. St. 1887, Sec. 3070.
 See 1 Ter. Ses. (1864) 575, Sec. 1.

California Legislation: Similar: Civ.
 Code 1872, Sec. 1262; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Cited: Wright v. Westheimer (1891) 3 Ida. 232; 28 Pac. 430; Law v. Spence (1897) 5 Ida. 244; 48 Pac. 282.

Selection by Widow: A widow hav-

ing children dependent on her for support, may exercise her homestead right after the death of her husband, during the course of administration of his estate. Coughanour v. Hoffman's estate (1887) 2 Ida. 290; 13 Pac. 231.

Insufficient Declaration: A declaration of homestead which is not acknowledged and certified as required

by statute, does not create a homestead right in the property. *Burbank*

v. Kirby (1898) 6 Ida. 210; 55 Pac. 295.

Contents of Declaration.

Sec. 3199. The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;
2. A statement that the person making it is residing on the premises, and claims them as a homestead;
3. A description of the premises;
4. An estimate of their actual cash value.

Historical: Rev. St. 1887, Sec. 3071. See 1 Ter. Ses. (1864) 575, Sec. 1.

California Legislation: Similar: Civ. Code 1872, Sec. 1263; same as amended: Deering's Code, ib.; similar as further amended: Kerr's Code, ib.

Cited: *Wright v. Westheimer* (1891) 3 Ida. 232; 28 Pac. 430.

Sufficiency of Declaration: It is requisite that a declaration of homestead should contain substantially the statements set forth in Section 3071 of the Revised Statutes, and where the declaration is made by the wife, the husband living, it should state that the husband "has not made such declaration, and that she therefore makes the declaration for their joint benefit".

Wilcox v. Deere (1897) 5 Ida. 545; 51 Pac. 98.

A declaration of homestead which describes certain town lots, and also one hundred sixty acres of farm land, alleging that "on a portion of which the claimant with family is residing", is void for indefiniteness. *Wilcox v. Deere* (1897) 5 Ida. 545; 51 Pac. 98.

A declaration of homestead which states that the declarant is married and that he actually resides on the premises therein described with his family, which consists of a wife and two children, is sufficient, although it does not expressly state that the declarant is the head of a family. *Mellen v. McMannis* (1904) 9 Ida. 418; 75 Pac. 98.

Declaration Must Be Recorded.

Sec. 3200. The declaration must be recorded in the office of the recorder of the county in which the land is situated.

Historical: Rev. St. 1887, Sec. 3072. See 1 Ter. Ses. (1864) 575, Sec. 1.

California Legislation: Same: Civ. Code 1872, Sec. 1264; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Wright v. Westheimer* (1891) 3 Ida. 232; 28 Pac. 430; *Burbank v. Kirby* (1898) 6 Ida. 210; 55 Pac. 295.

Declaration of Homestead.

Sec. 3201. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property; the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the probate court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title.

Historical: Rev. St. 1887, Sec. 3073. See 1 Ter. Ses. (1864) 575, Sec. 1.

California Legislation: Similar: Civ. Code 1872, Sec. 1265; same as amended except "superior" for "probate", line 8: Deering's Code, ib.; Kerr's Code, ib.

Cited: *Wright v. Westheimer* (1891)

3 Ida. 232; 28 Pac. 430; *Burbank v. Kirby* (1898) 6 Ida. 210; 55 Pac. 295.

Selection by Widow: The probate court may set apart a homestead out of the property of the husband after his death, on the application of the widow. *Coughanour v. Hoffman's Estate* (1887) 2 Ida. 290; 13 Pac. 231.

CHAPTER 4.

HOMESTEAD OF OTHER PERSONS.

Section

3202. Mode of selection.

3203. Declaration of homestead.

Section

3204. Declaration to be recorded.

3205. Effect of filing declaration.

Mode of Selection.

Sec. 3202. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a conveyance of real property is acknowledged, a declaration of homestead.

Historical: Rev. St. 1887, Sec. 3085.

California Legislation: Same except "grant" for "conveyance", line 3: Civ.

Code 1872, Sec. 1266; Deering's Code, ib.; Kerr's Code, ib.

Declaration of Homestead.

Sec. 3203. The declaration must contain everything required by the second, third and fourth subdivisions of the section prescribing the declaration of a head of a family.

Historical: Rev. St. 1887, Sec. 3086.

California Legislation: Same except "of Section 1263" for words follow-

ing "subdivisions": Civ. Code 1872, Sec. 1267; Deering's Code, ib.; Kerr's Code, ib.

Declaration to Be Recorded.

Sec. 3204. The declaration must be recorded in the office of the county recorder of the county in which the land is situated.

Historical: Rev. St. 1887, Sec. 3087.

California Legislation: Same: Civ.

Code 1872, Sec. 1268; Deering's Code, ib.; Kerr's Code, ib.

Effect of Filing Declaration.

Sec. 3205. From and after the time the declaration is filed for record, the land described therein is a homestead.

Historical: Rev. St. 1887, Sec. 3088.

California Legislation: Same: Civ. Code 1872, Sec. 1269; Deering's Code, ib.; Kerr's Code, ib.

Cited: Law v. Spence (1897) 5 Ida. 244; 48 Pac. 282.

TITLE 8

MINES AND MINING

Chapter

1. Location of lode mining claims.
2. Placer claims.

Chapter

3. Rights of way and easements for development of mines.
4. Mining tunnels.

Note: The mining law follows in a general way the Colorado system, but not closely enough to admit of detailed comparison. See Mill's An. St. Colo. Vol. 2, Secs. 3152 et seq.

For the election and duties of the State Mine Inspector, see Secs. 199-209. Statements by operators for protection of laborers: Secs. 1446-1448. Day's work in mines: Secs. 1463-1465. Mining partnerships: Secs. 3361-3372. Survey and examination of mining claims in litigation: Secs. 4542-4543. Contractors' and laborers' liens on mining claims, buildings, etc.: Secs. 5110-5124.

CHAPTER 1.

LOCATION OF LODE MINING CLAIMS.

Section

3206. Dimensions of lode claims.
3207. Location monument and notice.
3208. Shaft must be sunk.
3209. Notice must be recorded.
3210. Record of additional certificate.
3211. Affidavit of performance of labor.
3212. Location of abandoned claim.
3213. Notice must claim only one location.
3214. Security to surface owners: Injunction.

Section

3215. Appointment of deputy recorders.
3216. Affidavit of locators.
3217. Manner of recording notices: Fees.
3218. Transmission of notice to county recorder.
3219. Same: Transmission to deputies.
3220. Seal of deputies: Limitation on powers.

Dimensions of Lode Claims.

Sec. 3206. Mining claims hereafter located upon veins or lodes of quartz, or other rock in place bearing any of the metals or other valuable deposits mentioned in Section 2320 of the Revised Statutes of the United States, may extend to three hundred feet on each side of the middle of the vein or lode: *Provided*, That when the locators have set stakes, posts or monuments described in the following section, to indicate the line of the vein, ledge or lode, such stakes, posts or monuments must be taken, for the purpose of such location, to mark correctly the line thereof, and such line must not afterwards be changed so as to affect rights acquired, or interfere with any locations made, subsequent thereto.

Historical: Rev. St. 1887, Sec. 3100. (11 Ter. Ses. (1881) 262, Sec. 1); amended Laws 1895, 25, Sec. 1; re-

enacted Laws 1899, 237, Sec. 1.

Cited: *Ambergris Min. Co. v. Day* (1906) 12 Ida. 108; 85 Pac. 109.

Location Monument and Notice.

Sec. 3207. The locator, at the time of making the discovery of such

vein or lode, must erect a monument at such place of discovery, upon which he must place his name, the name of the claim, the date of discovery and distance claimed along the vein each way from such monument. Within ten days from the date of discovery, he must mark the boundaries of his claim by establishing at each corner thereof and at any angle in the side lines, a monument, marked with the name of the claim and the corner or angle it represents; also at the time of so marking his boundaries, he must post at his discovery monument his notice of location in which must be stated: First, the name of the locator; second, the name of the claim; third, the date of discovery; fourth, the direction and distance claimed along the ledge from the discovery; fifth, the distance claimed on each side of the middle of the ledge; sixth, the distance and direction from the discovery monument to such natural object or permanent monument, if any such there be, as will fix and describe in the notice itself the location of the claim, and seventh, the name of the mining district, county and State. When from any cause, a monument cannot be safely planted at the true corner or angle, it may be placed as near thereto as practicable, and so marked as to indicate the place of such corner or angle. Monuments may be made of any such material or form as will readily give notice, and when of posts or trees, they must be hewn and marked upon the side facing towards the discovery, and must be at least four inches square or in diameter. Monuments must be at least four feet high above the ground, and trees must be so hewn as to readily attract attention. At the time the locator so marks the boundaries of his claim, he may do so in any direction that will not interfere with rights or claims which existed prior to his discovery.

Historical: Rev. St. 1887, Sec. 3101. (See 11 Ter. Ses. (1881) 262, Secs. 2 and 3); amended Laws 1895, 25, Sec. 2; re-enacted Laws 1899, 237; Sec. 2; amended Laws 1899, 440, Sec. 1.

Necessity of Discovery: A vein or lode must be discovered before a valid location can be made thereon; one cannot locate a quartz claim on porphyry, granite, limestone or quartzite unless he has previously discovered a vein or lode. (Concur. op.) *Ambergris Min. Co. v. Day* (1906) 12 Ida. 108; 85 Pac. 109.

Location by Agent: An agent for the locator may do the things required by this section in locating a claim. *Dunlap v. Pattison* (1895) 4 Ida. 473; 42 Pac. 504.

Sufficiency of Notice: The location notice must describe the claim by reference to some natural object or permanent monument which will identify the claim and will furnish a reasonable certainty that the locus of the claim has not been, and cannot well be, changed; the reference must be such as will enable a skilled engineer to identify the claim without reference to contiguous claims, the location of which are uncertain, and the courses and distances from the permanent monument to the discovery

stakes or corner stakes, must be stated with reasonable accuracy. *Brown v. Levan* (1896) 4 Ida. 794; 46 Pac. 661.

A location which is tied to a natural object or permanent monument, described as the mouth of Big Canyon, and which fixes the discovery stake at 600 feet from such monument, without indicating the direction from the point of discovery, is void. *Clearwater Short Line Ry. v. San Garde* (1900) 7 Ida. 106; 61 Pac. 137.

A located mining claim is a natural object or landmark, or fixed object which may be referred to in the location notice. *Morrison v. Regan* (1902) 8 Ida. 291; 67 Pac. 955.

Where a location certificate contains a reference to a land mark, it should not be declared insufficient upon the mere inspection of the certificate and in the absence of evidence, unless it clearly fails to identify the claim. *Morrison v. Regan* (1902) 8 Ida. 291; 67 Pac. 955.

A location notice describing the claim as "Commencing at this stake and notice which is situated about 300 feet in a northwesterly direction from the Minnesota mine; that it is an extension of the Red Jacket mine and running thence along the vein or lode in an easterly direction to a similar stake and notice," is sufficient. *Ib.*

Shaft Must Be Sunk.

Sec. 3208. Within sixty days after such location, the locator or his assigns must sink a shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft to the surface, and of not less than sixteen square feet area. Any excavation which shall cut such vein ten feet from the lowest part of the rim of such shaft and which shall measure one hundred and sixty cubic feet in extent shall be considered a compliance with this provision. Any located claim upon which work has been done in compliance with the above requirements is not, unless abandoned, subject to relocation for a period of ninety days from and after the date of location.

Historical: Laws 1899, 237, Sec. 3; re-enacting Laws 1895, 25, Sec. 3.

Time Essential: The work required to be done must be performed within the time limited as a condition precedent to the vesting of the title; a

neglect in this respect cannot be cured by the performance of the work after the time limited, but before the institution of an adverse claim. *Kramer v. Settle* (1873) 1 Ida. 485.

Notice Must Be Recorded.

Sec. 3209. Within ninety days after the location of the claim the locator or his assigns must file for record in the office of the county recorder of the county, or of the deputy recorder of the mining district in which the claim is situated, a substantial copy of his notice of location.

Historical: Laws 1899, 237, Sec. 4; re-enacting Laws 1895, 25, Sec. 4.

Record of Additional Certificate.

Sec. 3210. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing the surface boundaries, or of taking any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this chapter, such locator or his assigns may file an additional certificate subject to the conditions of this chapter, and to contain all that this chapter requires an original certificate to contain: *Provided*, That such amended location does not interfere with the existing rights of others at the time when such amendment is made.

Historical: Laws 1899, 237, Sec. 5; re-enacting Laws 1895, 25, Sec. 5.

Amended Locations: An amended location may be made by any one having authority to make the same, and such authority need not be in writing. *Morrison v. Regan* (1902) 8 Ida. 291; 67 Pac. 955.

The proviso of this section that amended locations do not interfere with the existing rights of others at the time of amendment, only applies to changes of boundaries or to cases where part of an overlapping claim which has been abandoned is taken

in, and does not apply to amended locations by which the surface boundaries are not changed, or where no part of an overlapping claim is taken in. *Morrison v. Regan* (1902) 8 Ida. 291; 67 Pac. 955.

An amended certificate may cure a defective or erroneous original certificate and relates back to the date of the original certificate, unless such original is absolutely void, or where the rights of others have intervened between the date of the original and amended locations. *Ib.*

Affidavit of Performance of Labor.

Sec. 3211. Within sixty days after any time set or period allowed for the performance of labor, or making improvements upon any lode or placer claim, the person in whose behalf such work or improvement is performed, or some person for him, must make and record an affidavit in substance as follows:

State of Idaho, County of....., ss.

Before me the subscribed, personally appeared, who being first duly sworn says that at leastdollars worth of work for improvements were performed or made uponclaim, situate in mining district, county of....., State of Idaho: That such expenditure was made by, for, or at the expense of, owner of said claim, for the purpose of holding said claim; all stakes, monuments or trees marking boundaries of said claim are in proper place and positions.

Subscribed and sworn to before me this.....day of..... 19.....

The fee for administering the oath and recording the foregoing affidavit, when taken before the county recorder or deputy mining recorder, shall be fifty cents; the fee for recording the same when the oath is taken before any other officer authorized to administer oaths shall be fifty cents.

Such affidavit, or a certified copy thereof in case the original is lost, shall be prima facie evidence of the performance of such labor. The failure to file such affidavit shall be considered prima facie evidence that such labor has not been done.

Historical: Rev. St. 1887, Sec. 3101;
amended Laws 1899, 237, Sec. 6;
amended Laws 1899, 440, Sec. 2.

Location of Abandoned Claim.

Sec. 3212. The location of abandoned claims shall be done in the same manner as if the location were of a new claim; but the locator may, instead of sinking a new discovery shaft, sink the original discovery shaft ten feet deeper than it was at the time of his location, or he may drive the open cut, or tunnel ten feet further along the course of the lead, lode or vein, and must erect new posts or monuments.

Historical: Laws 1899, 237, Sec. 7;
re-enacting Laws 1895, 25, Sec. 7.

Notice Must Claim Only One Location.

Sec. 3213. No location notice shall claim more than one location, whether the location is made by one or several locators, and if it purport to claim more than one location it is absolutely void.

Historical: Laws 1899, 237, Sec. 8;
re-enacting Laws 1895, 25, Sec. 8.

Security to Surface Owners: Injunction.

Sec. 3214. When the right to mine is in any case separate from the ownership or right of occupancy of the surface ground, the owners or rightful occupants of the surface ground may demand satisfactory security from the miners, and if refused or not given, may enjoin such miners from working such ground until such security is

given. The court granting the writ of injunction shall fix the amount and nature of the security.

Historical: Laws 1899, 237, Sec. 10; re-enacting Laws 1895, 25, Sec. 10.

Appointment of Deputy Recorders.

Sec. 3215. For the convenience of prospectors and locators, the county recorders of the several counties must appoint a deputy at any place where they may deem it necessary, and at all places more than twenty miles distant from an existing office, whenever ten or more mining locators interested petition for the appointment of a deputy. Upon failure of any recorder to appoint a deputy for ten days after the petition in writing has been presented to him, the resident miners in such district may appoint, temporarily, one of their number to act as recorder for the district, whose record shall be as valid as if made by the deputy, and must be entered by the recorder as hereinafter required: *Provided*, That whenever at any time afterwards, the recorder has appointed a deputy for such district or place, the authority of the person elected by the resident miners ceases.

Historical: Rev. St. 1887, Sec. 3103, (see 11 Ter. Ses. (1881) 262, Sec. 4); amended Laws 1895, 25, Sec. 9; re-enacted Laws 1899, 237, Sec. 9.

Appointment of Sub-Deputy: A deputy recorder has no power to ap-

point another deputy to act in his place, and an affidavit sworn to before the deputy so appointed by him would be void. *Van Buren v. McKinley* (1901) 8 Ida. 93; 66 Pac. 936.

Affidavit of Locators.

Sec. 3216. At or before the time of presenting a location notice for record, whether it be for a quartz or placer claim, one of the locators named in the same must make and subscribe an affidavit, in writing on or attached to the notice, substantially in the following form, to-wit:

State of Idaho, County of....., ss:

I,, do solemnly swear that I am a citizen of the United States of America (or have declared my intentions to become such), and that I am acquainted with the mining ground described in this notice of location, and herewith called theledge, lode or claim; that the ground and claim therein described or any part thereof has not, to the best of my knowledge and belief, been located according to the laws of the United States and of this State, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply in respect thereto with the requirements of said laws, and (in the case of quartz claims) that I have opened new ground to the extent or depth of ten feet as required by the laws of Idaho.

Signature.....

Subscribed and sworn to before me this.....day of.....A. D. 19.....

Signature.....

Historical: Rev. St. 1887, Sec. 3104, (see 11 Ter. Ses. (1881) 262, Sec. 5); amended Laws 1895, 25, Sec. 13; re-enacted Laws 1899, 237, Sec. 13.

Validity of Section: This section in requiring an affidavit to a location notice prescribes a reasonable regu-

lation and is not in conflict with the United States Revised Statutes, Sec. 2322. *Van Buren v. McKinley* (1901) 8 Ida. 93; 66 Pac. 936.

Necessity of Affidavit: The affidavit as required by this section is necessary to a valid location. *Ib.*

Who May Make Affidavit: An agent or attorney in fact may locate a mining claim for his principal and may

make the affidavit required by this section. *Dunlap v. Pattison* (1895) 4 Ida. 473; 42 Pac. 504.

Manner of Recording Notices: Fees.

Sec. 3217. The location notice herein required to be recorded must be recorded by the deputy appointed for the district, or the person appointed for that purpose as above provided (when the legal fee therefor is tendered) in a book kept for that purpose. Said book must be indexed, with the names of all the locators arranged in alphabetical order, according to the family or surname of each. The fee to be tendered for making such record, administering the oath to the locator and certifying the same, for indexing the names appearing on the notice, and to include recording the notice by the recorder as hereinafter required, and the annexing by said recorder, is two dollars, which fee must be equally divided between the recorder and the deputy or the person acting under an election as hereinbefore provided, and no other additional sum of money must be demanded or received by either of them, for any services connected with the recording of any location notice made pursuant to the requirements of this chapter.

Historical: Rev. St. 1887, Sec. 3105, (see 11 Ter. Ses. (1881) 262, Sec. 6);

amended Laws 1895, 25, Sec. 14; re-enacted Laws 1899, 237, Sec. 14.

Transmission of Notices to County Recorder.

Sec. 3218. The deputy recorder of mining claims of each district, or the person elected as hereinbefore provided to make the record in case of the failure of the recorder to appoint a deputy, must, at least once in each month, transmit to the recorder at the county seat, all the notices of location filed with him for record and not previously transmitted, which must at once be recorded by said recorder, in a book to be kept in his office, to be known as the "Book of Mining Claims." The names of all persons appearing in every notice of location must be indexed by the recorder, said names being arranged in said index in alphabetical order, according to the first letter of the surname of said locators.

Historical: Rev. St. 1887, Sec. 3106, 11 Ter. Ses. (1881) 262, Sec. 7.

Same: Transmission to Deputies.

Sec. 3219. It shall be the duty of the county recorder of the several counties of this State, within fourteen days after receiving them, to transmit to the deputy mining recorder of the district wherein the claims located are situated, all location notices, both quartz and placer, which shall not have been already recorded in the office of the deputy mining recorder. It shall be the duty of such deputy mining recorder to record in his records all such notices received by him, and he shall receive as compensation therefor from the recorder sending them, one-half the fee authorized by law to be charged for the recording of mining claims. After recording such notices the deputy mining recorder shall return the same to the county recorder.

Historical: Laws 1903, 290, Sec. 1. "Recorder" inserted for "clerk", line 8, to correctly express the sense.

Seal of Deputies: Limitation on Powers.

Sec. 3220. The deputy recorders provided for in this chapter, are not, by virtue of the provisions hereof, authorized to perform any other than the special duties herein specified. They must keep an official seal, and the records in their custody are public records, but the seal of a deputy recorder must not be attached to any paper except for the purpose of authenticating certificates attached to transcripts of the records in his custody as deputy recorder.

Historical: Rev. St. 1887, Sec. 3107;
11 Ter. Ses. (1881) 262, Sec. 8.

CHAPTER 2.

PLACER CLAIMS.

Section	Section
3221. Location of placer claim.	3222. Monuments: Notice: Excavation: Record of notice.

Location of Placer Claims.

Sec. 3221. Placer claims, as mentioned in Section 2329 of the Revised Statutes of the United States, may be located for the purpose of mining deposits and precious stones after the discovery of such deposits.

Historical: Laws 1899, 237, Sec. 11;
re-enacting Laws 1895, 25, Sec. 11.

Monuments: Notice: Excavation: Record of Notice.

Sec. 3222. The locator of any placer mining claim located for the purpose of mining placer deposits or precious stones, must, at the time of making the location, place a substantial post or monument, as is required in the location of quartz claims, at each corner of the location, and must also post on one of the same a notice of location containing the date of the location, the name of the locator, the name and dimensions of the claim, the mining district (if any) and county in which the same is situated; and must also give the distance and direction from said post or monument to such natural object or permanent monument, if any such there be, as will fix and describe in the notice itself the location of the claim. Within fifteen days after making the location, the locator must make an excavation upon the claim of not less than one hundred cubic feet, for the purpose of prospecting the same. Within thirty days after the location, the locator must file for record in the office of the recorder of the county, or the deputy recorder of the mining district in which the claim is situated, a substantial copy of his copy of notice of location, to which must be attached an affidavit such as is required in case of quartz claims.

Historical: Laws 1895, 25, Sec. 12;
amended Laws 1897, 13, Sec. 1; re-enacted Laws 1899, 237, Sec. 12.

CHAPTER 3.
RIGHTS OF WAY AND EASEMENTS FOR THE DEVELOPMENT OF
MINES.

Section	Section
3223. Right of way for mining purposes.	3229 Setting aside report.
3224. Same: For railroads, ditches and tunnels.	3230. Rights upon payment of damages.
3225. Action to condemn right of way.	3231. Appeal from commissioners' award.
3226. Issuance and service of summons.	3232. Trial on appeal.
3227. Appointment of commissioner.	3233. Effect of appeal: Bond and deposit of damages.
3228. Oath, view and report of commissioners.	3234. Costs of appeal.
	3235. Costs of proceedings.

Right of Way for Mining Purposes.

Sec. 3223. The owner, locator, or occupant of a mining claim, whether patented under the laws of the United States or held by location or possession, may have and acquire a right of way for ingress and egress, when necessary in working such mining claim, over and across the lands or mining claims of others, whether patented or otherwise.

Historical: Rev. St. 1887, Sec. 3130. See 9 Ter. Ses. (1877) 70, Sec. 1.	Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.
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Same: For Railroads, Ditches and Tunnels.

Sec. 3424. When any mine or mining claim is so situated, that for the more convenient enjoyment of the same a road, railroad or tramway therefrom, or a ditch or canal to convey water thereto, or a ditch, flume, cut or tunnel to drain or convey the waters or tailings therefrom, or a tunnel or shaft, may be necessary for the better working thereof, which road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, may require the use or occupancy of lands or mining grounds, owned, occupied or possessed by others than the person or persons or body corporate, requiring an easement for any of the purposes described, the owner, claimant or occupant of the mine or mining claim first above mentioned, is entitled to a right of way, entry and possession for all the uses and privileges for such road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, in, upon, through and across such other lands or mining claims, upon compliance with the provisions of this chapter.

Historical: Rev. St. 1887, Sec. 3131. 11 Ter. Ses. (1881) 266, Sec. 1.	Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.
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Action to Condemn Right of Way.

Sec. 3225. When the owner, claimant, or occupant of any mine or mining claim desires to work the same, and it is necessary, to enable him to do so successfully and conveniently, that he have a right of way for any of the purposes mentioned in the foregoing sections, if such right of way cannot be acquired by agreement with the claimant or owner of the lands or claims over, under, through, across or upon which he seeks to acquire such right of way, he may commence an action in the District Court in and for the county in which such right

of way, or some part thereof, is situated, by filing a verified complaint containing a particular description of the character and extent of the right sought, a description of the mine or claim of the plaintiff, and of the mine or claim and lands to be affected by such right of way or privilege, with the name of the occupant or owner thereof. He may also set forth any tender of compensation that he may have made, and demand the relief sought.

Historical: Rev. St. 1887, Sec. 3132, (see 9 Ter. Ses. (1877) 70, Sec. 3); amended Laws 1899, 350, Sec. 1.

Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.

Issuance and Service of Summons.

Sec. 3226. Upon the filing of such complaint the clerk must issue a summons as provided in other civil actions, and the same must be served in the manner prescribed by law for service in ordinary actions.

Historical: Rev. St. 1887, Sec. 3133, (see 9 Ter. Ses. (1877) 70, Sec. 4); amended Laws 1899, 350, Sec. 2.

Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.

Cross Reference: Form of summons: Sec. 4140; service: Sec. 4144.

Appointment of Commissioners.

Sec. 3227. At any time after the service of the summons the plaintiff may upon ten days notice to the defendant, apply to the District Court or the Judge thereof for the appointment of commissioners to assess the damages resulting from the grant of such right of way. If upon the hearing of such motion, and the affidavits and proofs offered by the respective parties, the judge shall be of the opinion that the plaintiff has made a prima facie case entitling him to the relief demanded in the complaint, or any part thereof, he shall appoint three commissioners, who must be disinterested persons, residents of the county, to assess the damages resulting to the claims, mines, or lands of the defendant. But if such commissioners are not applied for and appointed, or their award is not approved by the judge or court, or if an appeal is taken from their award as hereinafter provided, the action shall be tried and determined by the court, and the provisions of the Code of Civil Procedure applicable thereto shall govern the proceedings therein as in other civil actions. Either party shall be entitled to a jury trial and may move for a new trial and appeal as in other cases.

Historical: Rev. St. 1887, Sec. 3134, (see 9 Ter. Ses. (1877) 70, Sec. 5); amended Laws 1899, 350, Sec. 3.

5210-5229. New trials: Secs. 4438-4445. Appeals: Secs. 4807-4826.

Cross Reference: Condemnation proceedings in District Court: Secs.

Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.

Oath, View and Report of Commissioners.

Sec. 3228. The commissioners so appointed must be sworn to faithfully and impartially discharge their duties, and must proceed without unreasonable delay to examine the premises and assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them; and if such right of way affects the property of more than one person or company, such report must contain an assessment of damages to each company or person.

Historical: Rev. St. 1887, Sec. 3135,
9 Ter. Ses. (1877) 70, Sec. 6.

Cited: Baillie v. Larson (1905)
138 Fed. Rep. 177.

Setting Aside Report.

Sec. 3229. For good cause shown, the judge may set aside the report of such commissioners and appoint three other commissioners whose duty shall be the same as above mentioned.

Historical: Rev. St. 1887, Sec. 3136.
9 Ter. Ses. (1877) 70, Sec. 7.

Cited: Baillie v. Larson (1905)
138 Fed. Rep. 177.

Rights Upon Payment of Damages.

Sec. 3230. Upon the payment of the sum assessed as damages as aforesaid, to the persons to whom it is awarded, or a tender thereof to them, then the person petitioning as aforesaid, is entitled to the right of way prayed for in his petition, and may immediately proceed to occupy the same and erect thereon such works and structures, and make therein such excavations, as may be necessary to the use and enjoyment of the right of way so awarded.

Historical: Rev. St. 1887, Sec. 3137.
9 Ter. Ses. (1877) 70, Sec. 8.

Cited: Baillie v. Larson (1905)
138 Fed. Rep. 177.

Appeal From Commissioners' Award.

Sec. 3231. Appeals from the assessment of damages made by the commissioners, may be made and prosecuted in the proper District Court by any party interested, at any time within ten days after the filing of the report of the commissioners. A written notice of such appeal must be served upon the appellee in the same manner as summons is served in civil actions. The appellant must file with the clerk of the court to which the appeal is taken, a bond with sureties to be approved by the clerk in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant will pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

Historical: Rev. St. 1887, Sec. 3138.
9 Ter. Ses. (1877) 70, Sec. 9.

Cited: Baillie v. Larson (1905)
138 Fed. Rep. 177.

Cross Reference: Service of summons: Sec. 4144.

Trial On Appeal.

Sec. 3232. An appeal brings before the District Court the necessity of the right of way or easement for the successful and convenient working of the mining claim and the amount of damages; and upon such appeal the case must be tried anew, and either party is entitled to a jury.

Historical: Rev. St. 1887, Sec. 3139.
See 9 Ter. Ses. (1877) 70, Sec. 10.

Cited: Baillie v. Larson (1905)
138 Fed. Rep. 177.

Effect of Appeal: Bond and Deposit of Damages.

Sec. 3233. The prosecution of an appeal from the award of the commissioners or from the judgment of the District Court does not hinder, delay or prevent the plaintiff from exercising all the rights and privileges granted by the award or judgment, if he deposit with the clerk of the District Court the full amount of the damages awarded or adjudged the defendant, and execute and deliver to the clerk

a bond with sufficient sureties to be approved by the clerk, in an amount to be fixed by the Judge of the District Court, conditioned to pay to the defendant any additional amount, over and above the amount so deposited that the defendant may recover, and all costs to which he may be entitled under the provisions of this chapter. At any time after such deposit and before the final determination of the action the defendant may, upon demand, receive from the clerk the amount so deposited, but his acceptance of the same, or any part thereof, shall bar any further prosecution of the appeal, and shall be deemed an acquiescence and consent to the award and judgment, and the defendant shall not be entitled to any costs subsequent to the judgment.

Historical: Rev. St. 1887, Sec. 3140 (see 9 Ter. Ses. (1877) 70, Sec. 11); amended Laws 1899, 350, Sec. 4.	Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.
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Costs of Appeal.

Sec. 3234. If the defendant recover judgment against the necessity of the easement, or for fifty dollars more damages than the plaintiff has tendered him as provided in the next section, or for fifty dollars more damages than the commissioners or judgment of the District Court awarded him, he shall recover the costs of the appeal, otherwise he must pay all such costs.

Historical: Rev. St. 1887, Sec. 3141 (see 9 Ter. Ses. (1877) 70, Sec. 12); amended Laws 1899, 350, Sec. 5.	Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.
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Costs of Proceedings.

Sec. 3235. The costs and expenses of proceedings under the provisions of this chapter, except as herein otherwise provided, must be paid by the party making the application: *Provided*, That if the applicant before the commencement of such proceedings, has tendered to the parties owning or occupying the lands or mining claims, a sum equal to or more than the amount of damages recovered, all of the costs and expenses must be paid by the party or parties owning the land or claims affected by such right of way, and who appeared and resisted the claim of the applicants thereto.

Historical: Rev. St. 1887, Sec. 3142. 9 Ter. Ses. (1877) 70, Sec. 13.	Cited: Baillie v. Larson (1905) 138 Fed. Rep. 177.
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CHAPTER 4.
MINING TUNNELS.

Section	Section
3236. Right to cross located claims.	3239. Burden of proof as to discovered vein.
3237. Owner of intersected claim may inspect tunnel.	
3238. Title to ore taken from intersected claim.	

Right to Cross Located Claim.

Sec. 3236. Any person or company who has or who may hereafter have a tunnel or cross-cut, the mouth of which is located upon his own ground or upon ground in his lawful occupation, shall have the

right to drive and continue the same through and across any located or patented claim in front of the mouth of the tunnel, but not to follow or drive upon any vein belonging to the owner of such claim.

Historical: Laws 1899, 442, Sec. 1.

Comparative Legislation: See Colo. Mill's An. Stat. Vol. 3, Sec. 3141a.

Constitutionality and Validity: This act, in granting to owners of ground having a tunnel located thereon, the right to run the same through the claims of others on payment of actual damages, is not subject to the objection of depriving any person of property without due process of law. *Baillie v. Larson* (1905)

138 Fed. Rep. 177.

The enactment of this law is authorized by United States Revised Statutes, Sec. 2338, (U. S. Comp. St. 1901, p. 1436), providing that, as a condition of sale of mineral lands, the local legislature of any State may prescribe rules for working mines, involving easements, drainage and other necessary means to their complete development. *Ib.*

Owner of Intersected Claim May Inspect Tunnel.

Sec. 3237. Each tunnel or cross-cut may be driven and worked for the purpose of drainage and for the purpose of reaching and working mining ground of the tunnel owner beyond the intersected claim. The owner or owners of any vein or any claim or claims so intersected, or his duly authorized agent, shall have the right to enter such tunnel upon application to the owner or owners or person in charge of said tunnel, without resorting to any process of law, for the purpose of making a survey and inspecting such vein or veins as may be crossed within the boundary lines of such intersected claim, and if the owner or owners of such tunnel shall, by bulk-heading, damming back, or in any manner, prevent the inspection or survey herein provided for, or if such owner or owners shall in any manner prevent the natural drainage of water from such intersected claim or claims without the consent of the owner or owners thereof, it shall work a forfeiture of all rights granted under the preceding section.

Historical: Laws 1899, 442, Sec. 2.

Comparative Legislation: See Colo. Mill's An. Stat. Vol. 3, Sec. 3141b.

Title to Ore Taken From Intersected Claim.

Sec. 3238. If any ore, the property of the owner of the claim intersected or crossed, be extracted in driving such tunnel, it shall be the property of the owner of the vein from which it was taken and the owner of the tunnel shall be liable for all actual damages or injury done to the owner of the claim crossed by his tunnel.

Historical: Laws 1899, 442, Sec. 3.

Comparative Legislation: See Colo. Mill's An. Stat. Vol. 3, Sec. 3141c.

Burden of Proof as to Discovered Vein.

Sec. 3239. In all actions between the tunnel owner and others involving the right to any vein discovered in such tunnel, the burden of proving that the vein so discovered is not the property of the adverse claimant in such action shall be on the tunnel owner.

Historical: Laws 1899, 442, Sec. 4.

Comparative Legislation: See Colo. Mill's An. Stat. Vol. 3, Sec. 3141d.

TITLE 9

WATER RIGHTS AND IRRIGATION

Chapter

1. General provisions.
2. Appropriation of water.
3. Distribution of water among appropriators.
4. Distribution to consumers.

Chapter

5. Fixing water rates.
6. Rights of way.
7. Maintenance and repair of ditches.

Note: Two acts passed in 1881 were the basis of the irrigation law of the State for a number of years. The act of Feb. 10, 1881, (Laws 1881, 267) regulated the appropriation of water, requiring the posting of notices at the point of diversion and the recording of the same as in the case of mining claims, and prescribing the manner of procuring rights of way by proceedings before the county commissioners. The act of Feb. 7 (Laws 1881, 273) regulated the distribution of water through water masters whose election and duties were therein provided for. The provisions of these two acts were substantially perpetuated in the Rev. St. 1887, Civ. Code, Title 9 (Secs. 3155-3205). A new act covering the appropriation of water and providing for fixing water rates by the District Court was enacted in 1895 (Laws 1895, 174). This act was in part re-enacted and in part repealed by the act of Feb. 25, 1899 (Laws 1899, 380) which added several new provisions to the law and gave to the county commissioners jurisdiction to fix water rates. The appropriation provisions of the 1899 law were repealed by Laws 1903, 223, which, for the first time, departed from the old system of posting and recording notices of appropriation, placing the matter in the hands of the State Engineer. The act of 1903, with such sections of the 1899 and earlier laws as are still in force, comprise the subject matter of this title.

The present Idaho appropriation law is based on the statutes of Wyoming and Colorado. The first twelve sections follow the "Wyoming System". See Rev. St. Wyo. 1899, Secs. 917 et seq. Under the "Colorado System," for the purpose of adjudicating the priority of rights to the use of water, the courts have original jurisdiction. Mill's An. Stat. Colo. Vol. 1, page 149, Sec. 2399. In this respect the Idaho law follows that of Colorado. Under the Wyoming System such jurisdiction is vested in a board of control. Rev. Stat. Wyo. 1899, Secs. 857 et seq.

Other provisions bearing on the irrigation laws may be found as follows. Appointment, qualifications, and general duties of the State Engineer. Secs. 149-160. Carey Act lands: Secs. 1613-1642. Irrigation districts: Secs. 2372-2443. Water and canal corporations and water users' associations: Secs. 2838-2844. Penal provisions of the irrigation law: Secs. 7144-7149.

CHAPTER 1.

GENERAL PROVISIONS.

Section

3240. Nature of property in water.
3241. Measurement of water.
3242. Right acquired by appropriation.
3243. Appropriation must be for beneficial purpose.
3244. Use of natural channels.
3245. Priority.
3246. Same: Waste, seepage and spring waters.

Section

3247. Change in point of diversion.
3248. Change in course of ditch prohibited when.
3249. Right of ditch owners to divert water.
3250. Domestic purposes defined.
3251. Completion defined.

Nature of Property in Water.

Sec. 3240. Water being essential to the industrial prosperity of the State, and all agricultural development throughout the greater portion of the State depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the State, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the State, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the State are declared to be the property of the State, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose, and the right to the use of any of the waters of the State for useful or beneficial purposes is recognized and confirmed; and the right to the use of any of the public waters which have heretofore been or may hereafter be allotted or beneficially applied, shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied; and the right to continue the use of any such water shall never be denied or prevented from any other cause than the failure on the part of the user thereof to pay the ordinary charges or assessments which may be made to cover the expenses for the delivery of such water.

Historical: Laws 1901, 191, Sec. 9b.

Cross Reference: Use of water a public use: Const. Art. 15, Sec. 1.

Rights to Ditches: Possessory rights to ditches and to the use of water may each have an existence independent of the other. A ditch may be conveyed, reserving the water right, or the water may be conveyed, reserving the ditch. *Ada Co. Farmers' Irr. Co. v. Farmers' Canal Co.* (1898) 5 Ida. 793; 51 Pac. 990.

Nature of Water Right: The

clause of this section which provides that the right of the water user shall not be considered as being a property right in itself but shall become a complement, or one of the appurtenances, of the land on which the water is applied, does not deprive or divest the right to the use of water of any of the qualities of elements of property it otherwise might have. (Concur. op. Sullivan, C. J., dissents.) *Hard v. Boise City Irr. etc. Co.* (1904) 9 Ida. 589; 76 Pac. 331.

Measurement of Water.

Sec. 3241. A cubic foot of water per second of time shall be the legal standard for the measurement of water in this State, and it shall be the duty of the State Engineer to devise a simple, uniform system for the measurement and distribution of water.

Historical: Laws 1899, 380, Secs. 1, 21.

Right Acquired by Appropriation.

Sec. 3242. The right to the use of the waters of rivers, streams, lakes, springs, and of subterranean waters, may be acquired by appropriation.

Historical: Laws 1899, 380, Sec. 2. See Rev. St. 1887, Sec. 3155.

California Legislation: Similar: Civ.

Code 1872, Sec. 1410; Deering's Code, ib.; Kerr's Code, ib.

Appropriation Must Be for Beneficial Purpose.

Sec. 3243. The appropriation must be for some useful or bene-

ficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases.

Historical: Laws 1899, 380, Sec. 3. Rev. St. 1887, Sec. 3156.

California Legislation: Same except "such a purpose" for "such purpose": Civ. Code 1872, Sec. 1411; Deering's Code, ib.; Kerr's Code, ib.

Application to Use: Where persons appropriated water sufficient to irrigate 480 acres of land in 1872, and from that year until 1886 used the

water so appropriated in the irrigation of only 200 acres of the land, when they put into cultivation 150 acres more, their right to all the water appropriated, so far as the same was necessary to irrigate the entire 480 acres, was thereby preserved. *Hall v. Blackman* (1902) 8 Ida. 272; 68 Pac. 19.

Use of Natural Channels.

Sec. 3244. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

Historical: Rev. St. 1887, Sec. 3158.

California Legislation: Same: Civ.

Code 1872, Sec. 1413; Deering's Code, ib.; Kerr's Code, ib.

Priority.

Sec. 3245. As between appropriators, the first in time is first in right.

Historical: Laws 1899, 380, Sec. 4. Rev. St. 1887, Sec. 3159.

California Legislation: Same except "the one first" for "the first": Civ. Code 1872, Sec. 1414; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Right of priority and preferences as between domestic, irrigation and mining uses: Const. Art. 15, Sec. 3. Priority of right between persons who have settled on land with the view of receiving water for agricultural purposes under a sale, rental or distribution, is subject to reasonable limitations as to the quantity of water used and the time of use: Const. Art. 15, Sec. 5.

Riparian Rights Repudiated: A prior appropriator of water has a right to the use thereof which is superior to the claim of a riparian proprietor not based upon appropriation but on the doctrine of riparian rights. (Berry, J., dissents.) *Drake v. Earhart* (1890) 2 Ida. 750; 23 Pac. 541.

Priorities: The first appropriation of water for useful or beneficial purposes gives the prior right thereto, and the right once vested will be protected and upheld unless abandoned. *Malad Valley Irr. Co. v. Campbell* (1888) 2 Ida. 411; 18 Pac. 52; *Geertson v. Barrack* (1892) 3 Ida. 344; 29 Pac. 42; *Dunniway v. Lawson* (1898) 6 Ida. 28; 51 Pac. 1032. The doctrine of priority must be applied although its application may be harsh and unjust in the particular case. *Kirk v. Bartholomew* (1892) 3 Ida. 367; 29 Pac. 40.

The right of a prior appropriator of water to the use of the same to the extent of his appropriation is not defeated by his having, through mistake, used a portion of the water on land belonging to another. *Mahoney v. Neiswanger* (1899) 6 Ida. 750; 59 Pac. 561.

Extent of Right: One who first appropriated all the waters of a creek, and since the appropriation continually used the same for the purpose of irrigating his lands, is entitled to all of said waters, to the extent of the capacity of his ditches, necessary to the proper irrigation of his lands, as against subsequent locators. *Hillman v. Hardwick* (1891) 3 Ida. 255; 28 Pac. 438.

Date of Priority: When two persons as partners appropriated water sufficient to irrigate 480 acres of land, owned by them as tenants in common, in 1872, and actually irrigated 200 acres of land until 1886, when they severed their interests, one taking the uncultivated portion and the other the cultivated, the rights of each to their respective shares of the water appropriated by them jointly, dates from 1872. *Hall v. Blackman* (1902) 8 Ida. 272; 68 Pac. 19.

Where one settled on unsurveyed lands and, during the year of such settlement, opened up an old ditch which had been constructed and used by a previous settler, put in a head-gate and conveyed waters of a stream 150 feet to and upon the lands claimed by him, and in the following year ex-

tended the ditch so as to better distribute the water over his claim, the water right so acquired dates from the time when the water was actually delivered upon the ground for the use of which it was diverted, and the priority thereby acquired was not broken by a subsequent sale of the claim, ditch and water right, and transfer of possession to the vendee. *Brown v. Newell* (1906) 12 Ida. 166; 85 Pac. 385.

Protection of Right: Where the prior appropriation and right to the use of water is established, the appropriator is entitled to have sufficient of the unappropriated waters flow

down to his point of diversion to supply his right, and an injunction against an interference therewith is proper protective relief. *Moe v. Harger* (1904) 10 Ida. 302; 77 Pac. 645.

Decree Establishing Priority: Where priority of appropriation, the amount of water appropriated and the beneficial use thereof have been established, the court, in its decree establishing such facts, cannot go further and dictate the manner in which the appropriator shall use the water, so long as it is adapted to a beneficial purpose. *McGinness v. Stanfield* (1898) 6 Ida. 372; 55 Pac. 1020.

Same: Waste, Seepage and Spring Waters.

Sec. 3246. All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the State, shall be governed by the same laws relating to priority of right as those ditches, canals, and conduits constructed for the purpose of utilizing the waters of running streams.

Historical: Laws 1899, 380, Sec. 23.

Change in Point of Diversion.

Sec. 3247. The person entitled to the use of water may change the place of diversion, if others are not injured by such change; and may extend the conduit by which the diversion is made to places beyond that where the first use was made.

Historical: Laws 1899, 380, Sec. 11. See Rev. St. 1887, Sec. 3157.

California Legislation: Same except "of water", line 1, omitted and "ditch, flume, pipe or aqueduct" for "conduit": Civ. Code 1872, Sec. 1412; Deering's Code, ib.; Kerr's Code, ib.

Change in Diversion or Use: A person entitled to the use of water may change the place of diversion or place of use so long as others are not injured by the change. *Hard v. Boise City Irr. etc. Co.* (1904) 9 Ida. 589; 76 Pac. 331. But the change cannot be made if others are injured thereby. *Walker v. McGinness* (1902) 8 Ida. 540; 69 Pac. 1003; *Hill v. Standard Min. Co.* (1906) 12 Ida. 223; 85 Pac. 907.

Extent of Right: The right to change the place of diversion includes cases in which the use of the water amounts to its absorption, or is such as to imply notice to subsequent appro-

priators that such change may reasonably be expected, but excludes appropriations to be used at a specific place for the purpose of operating machinery and other works, where the water is used and then returned to the stream practically undiminished in quantity, when such change will damage a subsequent appropriator. *Last Chance Min. Co. v. Bunker Hill etc. Min. Co.* (1892) 49 Fed. Rep. 430.

Transfer of Rights: Users of water from a ditch or canal acquire a property right therein which they may transfer to other lands under such ditch or canal, or may sell and transfer to a purchaser who may also transfer the same to other lands under the ditch and canal, so long as the change does not interfere with the rights of others. (*Sullivan, C. J.*, dissents.) *Hard v. Boise City Irr. etc. Co.* (1904) 9 Ida. 589; 76 Pac. 331.

Change in Course of Ditch Prohibited When.

Sec. 3248. Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one

who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal.

Historical: Rev. St. 1887, Sec. 3189, middle portion of section. The first portion prescribed the priorities of settlers in the use of water from a ditch in a manner different from Laws 1899, 380, Sec. 20, (Code Sec. 3290),

and the remaining portion fixed the duty of ditch owners in the furnishing of water and their liability for failure to do so, which are covered by Secs. 15, 18 of the act of 1899 (Code Secs. 3306, 7149).

Right of Ditch Owners to Divert Water.

Sec. 3249. The proprietors of any ditch, canal or conduit, or other works for the carriage of water, whose right relative to the quantity of water they shall be entitled to divert by means of such works shall have been established by any decree of court, shall be entitled to such quantity measured at the point of diversion, subject, however, to all prior rights.

Historical: Laws 1899, 380, Sec. 32.

Domestic Purposes Defined.

Sec. 3250. The phrase "domestic purposes" as contained in this title shall be construed to include water for the household, and a sufficient amount for the use of domestic animals kept with and for the use of the household.

Historical: Laws 1899, 380, Sec. 12. First part of section; the remainder is superseded by Laws 1903, 223.

Completion Defined.

Sec. 3251. By completion, is meant conducting the waters to the place of intended use.

Historical: Laws 1899, 380, Sec. 7. Rev. St. 1887, Sec. 3162.

California Legislation: Same: Civ. Code 1872, Sec. 1417; Deering's Code, ib.; Kerr's Code, ib.

Cited: Sand Point Water & Light Co. v. Panhandle etc. Co. (1905) 11 Ida. 405; 83 Pac. 347.

CHAPTER 2.

APPROPRIATION OF WATER.

Section

- 3252. Water rights acquired under chapter.
- 3253. Application to appropriate water.
- 3254. Same: Examination: Permit: Commencement of work: Bond.
- 3255. Amended application and permit.
- 3256. Contest for cancellation of permit.
- 3257. Proof of completion.
- 3258. Engineer to report on work: Issuance of certificate.

Section

- 3259. Appeal from Engineer's decision.
- 3260. Proof of application to beneficial use.
- 3261. Issuance of license: Priority.
- 3262. Effect of license.
- 3263. Fees of Engineer.
- 3264. Abandonment: Change of place of use.
- 3265. Protest against license: Appeal from decision.
- 3266. State Engineer to examine streams.

Water Rights Acquired Under Chapter.

Sec. 3252. All rights to divert and use the waters of this State for beneficial purposes shall hereafter be acquired and confirmed under

the provisions of this chapter. And after the passage of this title, all the waters of this State shall be controlled and administered in the manner herein provided.

Historical: Laws 1903, 223, Sec. 41. Omitting the concluding clause which repeals all conflicting legislation.

Cited: Sand Point Water & Light Co. v. Panhandle etc. Co. (1905) 11 Ida. 405; 83 Pac. 347.

Repeal: This section repeals prior appropriation acts which provided in substance for the posting and recording of a notice and the commencement and completion of diversion works within a reasonable time. For the purpose of historical reference, the following notes of decisions under the old appropriation law are given:

Date of Appropriation: One who posts and records his notice of intention to appropriate water, and within sixty days thereafter commences work on his diversion works, and continues the prosecution of the same with reasonable diligence, is entitled to have his appropriation date from the posting of notice, and his right is prior and superior to the rights of any subsequent appropriator claiming either by posting notice and compliance with the statute or by the natural diversion and application of

the water. Sand Point Water & Light Co. v. Panhandle etc. Co. (1905) 11 Ida. 405; 83 Pac. 347.

Mode of Appropriation: A person desiring to appropriate water may do so either by naturally diverting the water and applying it to a beneficial use, or he may pursue the statutory method of posting and recording his notice and commencing to prosecute his work within the statutory time. *Ib.*

Beneficial Application of Water: The appropriator is entitled to a reasonable time within which to get his land in cultivation and to make application of the water to the land, and what constitutes a reasonable time is a question of fact dependent upon the circumstances in each particular case. *Conant v. Jones* (1893) 3 Ida. 606; 32 Pac. 250.

A party who appropriated water to run a sawmill, but failed, for fourteen years after posting his notice, to erect or put into operation such sawmill, failed to proceed with reasonable diligence and lost his right to the water appropriated. *Stickney v. Hanrahan* (1907) 7 Ida. 424; 63 Pac. 189.

Application to Appropriate Water.

Sec. 3253. For the purpose of regulating the use of the public waters and of establishing by direct means the priority of right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, or lakes or other public waters in the State of Idaho, shall, before commencing the construction, enlargement or extension or change in the point of diversion of the ditch, canal, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the State Engineer for a permit to make such appropriation.

Such application must set forth: (1) The name and postoffice address of the applicant, (2) the source of the water supply, (3) the nature of the proposed use, (4) the location and description of the proposed ditch channel or other work and the amount of water to be diverted and used, (5) the time required for the completion of construction of such works, which in no case shall exceed five years from the date of approval of the application, (6) the time required for the complete application of the water to the proposed use, which must be within four years after the date set for the completion of such works.

The application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and

dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines, and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated.

If such application is filed by a corporation it shall state (1) the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors, and (2) the financial resources of the corporation or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided. If for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of land proposed to be irrigated, with the total acreage to be reclaimed as near as may be: *Provided*, That no one shall be authorized to divert for irrigation purposes more than one cubic foot of water per second for each fifty acres of land to be so irrigated, unless it can be shown to the satisfaction of the State Engineer that a greater amount is necessary: *Provided, further*, That the plan of irrigation submitted shall provide for the distribution of water to within not more than one mile of each legal subdivision of the land proposed to be reclaimed by the use of such water: *Provided, also*, That in the case of all ditches designed to have a capacity of ten cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the State Engineer.

No permit shall issue under any application filed hereafter until the applicant shall have deposited with the State Engineer a filing fee of one dollar, if the quantity of water claimed is one cubic foot or less per second, and if the quantity of water claimed is in excess of one cubic foot per second, the fee to be so deposited by the applicant shall be increased ten cents for each additional cubic foot or fraction thereof: *Provided*, That no filing fee shall be required in the case of any application which is in effect a refiling of a previous application upon which the required fee was paid at the time of the original filing. The State Engineer shall make and keep in a suitable book a record of all filing fees received in connection with applications for permits to appropriate public waters, and said record shall set out: (1) The name of the applicant, (2) the number of the application, (3) the quantity of water filed on, (4) the amount of the fee received, and (5) the date of receipt of said fee.

Historical: Laws 1903, 223, Sec. 1;
amended Laws 1905, 357, Sec. 1.

Same: Examination: Permit: Commencement of Work: Bond.

Sec. 3254. On receipt of the application, which shall be of a form prescribed by the State Engineer, it shall be the duty of that officer to make an indorsement thereon of the date of its receipt, and to

make a record of such receipt in some suitable book in his office. It shall be his duty to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination, the application is found defective, it shall be the duty of the State Engineer to return the same for correction within thirty days from the receipt of such application, and the date of such return, with the reason therefor, shall be indorsed on the application, and a record made thereof in a book kept for recording the receipt of such applications. A like record shall be kept of the date of the return of corrected applications, but such corrected applications shall be returned to the State Engineer within a period of sixty days from the date indorsed thereon by the State Engineer: *Provided*, That if it be returned after such period of sixty days, such corrected application shall be treated in all respects as an original application. All applications which shall comply with the provisions of this chapter and with the regulations of the State Engineer's office shall be numbered consecutively, and shall be recorded in a suitable book kept for that purpose, and it shall be the duty of the State Engineer to approve all applications, made in proper form, which contemplate the application of water to a beneficial use.

The approval of an application shall be indorsed thereon, and a record made of such indorsement in the State Engineer's office. The application so indorsed shall constitute a permit, and shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and to perfect the proposed appropriation. In his indorsement of approval on any application, the State Engineer shall require that actual construction work shall be completed within a period of five years from the date of such approval, and that one-fifth of such work of construction shall be done within one-half the period of time allowed for the completion of such works. He may limit the application to a less period of time for the completion of such works than is asked for, and likewise the perfecting of the proposed right for a less period than is named in the application, and such indorsement shall give the date when such work shall be completed, also the date when beneficial application of the water to be diverted by such works shall be made for the purpose intended.

Any applicant feeling himself aggrieved by the indorsement made by the State Engineer upon his application may appeal therefrom to the District Court of the county in which the point of diversion of the proposed appropriation shall be situated. Such appeal shall be taken within sixty days from the return of the application by the State Engineer, and shall be perfected when the applicant shall have filed in the office of the clerk of such District Court a copy of the application, certified by the State Engineer as a true copy, together with the petition to such court, setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, and such like proofs as shall be adduced by the State Engineer or some person duly authorized in his behalf.

The maps accompanying such applications must contain the name of the proposed work, and, when it is possible, the number of the permit. They must in addition, have the name or names of the applicant or applicants, and when the proposed works have a capacity of more than twenty-five second feet, a certificate of the surveyor giving the date of the survey, his name and postoffice address. It shall be the duty of the State Engineer to examine these maps or plats, and to ascertain if they agree with the description contained in the application, and when found to agree, to approve the same, file one copy in his office and return the other, approved, to the party filing them.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter, appropriating twenty-five cubic feet or less per second, must, within sixty days from the date upon which said permit issues from the office of the State Engineer, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances over which he has no control.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter, appropriating more than twenty-five cubic feet per second, must, within sixty days from the date upon which the said permit issues from the office of the State Engineer, file with the State Engineer a bond in an amount to be fixed by the State Engineer, not exceeding ten thousand dollars, in form and sufficiency of sureties to be approved by him, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit; the amount of the bond to be fixed by the State Engineer within the limits hereinbefore prescribed.

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified, shall be deemed to have abandoned all right under his permit.

Historical: Laws 1903, 223, Sec. 2;
amended Laws 1905, 357, Sec. 2.

Amended Application and Permit.

Sec. 3255. Whenever application has been made for a permit to appropriate water for irrigation, or whenever a permit has been issued and the applicant or permit holder desires to change the place of intended use of the water or correct the description of the lands to be irrigated, he shall file a request therefor with the State Engineer, who shall thereupon note the application on the record of the original application or permit, and shall issue a new permit, noting the amendment therein, and specifying that it is issued as an amendment to the original. The right to the use of water under the amended permit shall date from the time of the original permit: *Provided*, An additional amount of water is not asked for, and except where the rights of others are adversely affected by such changes, in which case it shall date from the filing of the application for the amendment.

Historical: Laws 1907, 314, Sec. 1.

Contest for Cancellation of Permit.

Sec. 3256. If the holder of a permit, at the expiration of one-half the time set for the completion of such works, shall not have completed at least one-fifth the work of construction as contemplated in the application for such permit to construct such works, any person or persons holding any permit for the diversion of waters from the same stream (such permit post dating the permit for the diversion of water through such unfinished works as aforesaid) may, on or after such date set for the doing of one-fifth of such work of construction, enter contest against such prior permit, and petition the State Engineer to cancel the same. Such contestant shall file with the State Engineer a petition in duplicate clearly setting forth the facts in relation to the condition of the unfinished work under the permit which is sought to be cancelled. Each copy of the petition shall be certified to by a well known and competent engineer. Thereupon the State Engineer shall file one copy of said petition in his office and immediately forward the other copy by registered mail to the holder of the permit which is sought to be cancelled by the petitioner, or, if said permit be held in the names of two or more persons as shown by the records of the office of the State Engineer, then such copy of such petition shall be forwarded by registered mail to the person whose name first appears upon the records of the State Engineer's office as one of the holders of the contested permit.

The person to whom such copy of such petition is sent must, within sixty days from the date upon which such copy of such petition is mailed from the office of the State Engineer, file with said State Engineer an affidavit to the effect that one-fifth of the work of construction had been done under the contested permit at the time when the contestant filed his petition with the State Engineer. Such affidavit must be supported by the certificate of a well known and competent engineer to the effect that, in his opinion, the statements made in such affidavit are true and correct.

If such affidavit and certificate be not filed in the office of the State Engineer as hereinbefore required, the State Engineer shall forthwith proceed to cancel such contested permit and shall cause his order of cancellation to be spread upon the record copy of such permit as shown by the records of his office: *Provided*, That if the State Engineer be satisfied that the contestee has not received the copy of contestant's petition, as hereinbefore required to be sent by registered mail, then an examination of the works under the contested permit shall be made by the State Engineer, or by some one duly authorized by him to act in his stead, as hereinafter provided.

Upon receipt of the affidavit of the contestee and the certificate in support of the same made by a well known and competent engineer as hereinbefore required, the State Engineer, at the expense of the contestant, shall make or cause to be made an examination of the works under such contested permit, and if after such examination, the State Engineer is satisfied that the allegations made in the contestant's petition are true and correct, he shall forthwith proceed to cancel such contested permit, and shall cause his order of cancellation to be spread upon the record copy of such permit as shown by the records of his office, but if he be satisfied, after such examination,

that the statements made in the contestee's affidavit are true and correct, then he shall deny the contestant's petition. Any construction work done by the contestee after the filing of contestant's petition with the State Engineer shall be disregarded by that official in rendering his decision, and if he deem it necessary, he may require the contestee to make affidavit setting forth the amount of money expended, the number of men employed, and the amount of work done under the contested permit subsequent to the filing of the contestant's petition.

Upon rendering his decision the State Engineer shall, by registered mail, notify the party against whom such decision may be. Either of the parties feeling themselves aggrieved by the action of the State Engineer may appeal therefrom to the District Court of the county in which the point of diversion of the works in question is situated. Such appeal shall be taken within sixty days from the receipt of the notice of such action of the State Engineer, and if the petitioner to such State Engineer shall file the appeal, the holder of the permit in question shall be the defendant, and if the holder of such permit which has been cancelled shall be the appellant, the party who petitioned for such cancellation shall become the defendant in such appeal, and such appeal shall be perfected when the appellant shall have filed in the office of the clerk of such District Court, a copy of such petition to the State Engineer, and a copy of the decision of such Engineer, certified to by such Engineer as true copies, together with the petition to such court setting forth the appellant's reason for appeal.

Historical: Laws 1903, 223, Sec. 3;
amended Laws 1907, 532, Sec. 1.

Proof of Completion.

Sec. 3257. On or before the date set for the completion of works for the diversion and application of water under any permit, the holder of such permit, or his assigns, shall be prepared to submit proof of the completion of such works to the State Engineer. Such holder of such permit shall first notify the State Engineer that he is prepared to submit such proof of completion of such works. Such notice to the State Engineer shall be given by registered mail at least sixty days before the date set for the completion of such works, and shall be on a form furnished by such Engineer, and shall state (1) the name of the person or corporation holding the permit under which such works are constructed, (2) the postoffice address of such person or the place of business of such corporation, (3) the number of such permit, and the date set for the completion of such works under the same, (4) the use for which said water is intended, (5) whether or not such works will be fully completed on the date set for such completion, and the amount of water which such works are capable of conducting to the place of intended use in accordance with the plans of the same accompanying the application for such permit, (6) if for irrigation, the amount and description of the lands for which said water is available according to such plans. In case of all canals or other works designed to divert and carry more than fifty cubic feet per second of water, the facts set forth in such notice to the State

Engineer shall be certified to by a well known and competent irrigation engineer.

Upon receipt of such notice by the State Engineer, he shall immediately order its publication for a period of four weeks in some newspaper designated by the person sending such notice and published in the county in which such works are situated. Such published notice shall also state the date when such proof of completion shall be submitted to such Engineer, and the place where the same shall be submitted, and such publication shall be at the expense of the person making such proof.

Such person or persons establishing such proof of completion may offer the affidavits of competent engineers in relation to the grades, dimensions and capacity of such works, and the amount and location of land to which water can be delivered for irrigation. The State Engineer may, in the case of canals designed to divert fifty cubic feet per second or more, demand that profiles and cross-sections, showing the grade and the finished condition of such works, be filed with him in support of the claims which may be made in relation to the finished condition of such works, by the person or persons holding such permit. And in the case of works capable of diverting, on the date set for such completion, the full amount of water for which such works were intended, such State Engineer shall have authority to order the water turned into such works for the purpose of measuring the same.

Historical: Laws 1903, 223, Sec. 4.

Constitutionality: This section does not vest judicial power in the State

Engineer in violation of Const. Art. 5, Sec. 2. Boise Irr. etc. Co. v. Stewart (1904) 10 Ida. 38; 77 Pac. 25, 321.

Engineer to Report on Work: Issuance of Certificate.

Sec. 3258. On or before the date set for receiving such proof of completion, the State Engineer shall make or cause to be made a full inspection and examination of the works constructed, and shall make or cause to be made a report on their condition, ascertaining and stating whether or not they conform to the terms of the application and permit, and are capable of diverting the amount of water intended, and he shall ascertain how much water such works are capable of diverting and conducting to the place of intended use at the time of such proof of completion. He shall issue a certificate to the holder of such permit or his assigns, which certificate shall set forth (1) the name of the holder of the permit under which the works were constructed, (2) the number of such permit, (3) the date of the application for the same, (4) the postoffice address of such holder, (5) the condition of such works, (6) the purpose for which they were constructed, (7) the quantity of water which can be diverted by the same and conducted to the place of intended use, (8) and if such water is to be used for irrigation, a description of the lands for which water is made available by such works. The State Engineer shall file such report, and make a record in books kept in his office for the purpose, of all the facts in relation to the condition of such works, and their capacity on the date of such proof of completion.

Whenever it shall be desired to enlarge or extend existing works, or complete works not completed on the date set for such completion, all applications for a permit to make such enlargement, extension or

completion shall be filed with the State Engineer, the same as for original construction, and the priority of all rights resulting from such enlargement, extension or completion shall relate to such application.

Historical: Laws 1903, 223, Sec. 5.

Constitutionality: This section does not vest judicial power in the State

Engineer in violation of Const. Art. 5, Sec. 2. *Boise Irr. etc. Co. v. Stewart* (1904) 10 Ida. 38; 77 Pac. 25, 321.

Appeal From Engineer's Decision.

Sec. 3259. Whenever any person or persons feel themselves aggrieved by the determination of the State Engineer in relation to the question of completion of works constructed under a permit issued by him, such person or persons may appeal to the courts: *Provided*, That such appeal shall be taken within sixty days from the date of the certificate relating to such completion by such Engineer, and shall be perfected when the appellant shall have filed in the office of the clerk of the District Court a copy of the certificate, certified by the State Engineer as a true copy, together with the petition to such court setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, and such like proofs as shall be adduced by the State Engineer or some person authorized in his behalf.

Historical: Laws 1903, 223, Sec. 6.

Proof of Application to Beneficial Use.

Sec. 3260. On or before the date set for the beneficial use of waters diverted under the provisions of this chapter, which in no case shall be more than four years from the date set for the completion of any canal or other works designed to divert and conduct the public waters of the State to a place of use, or the date for the enlargement or extension or the completion of works for such purpose, the person or persons using such water shall submit proof that they have used such water for the beneficial purpose for which the diversion of such water was intended. Such user of such water shall first notify the State Engineer that he is prepared to prove that such water has been beneficially applied to the purpose for which it was intended. Such notice to the State Engineer shall state (1) the name and post-office address of such user, (2) the use to which such water has been applied, (3) the amount used, (4) the place of such use, and, if for irrigation, the description by legal subdivisions of the lands so irrigated, (5) the name of the canal or ditch or other works by which such water is conducted to such place of use, (6) the relation or understanding upon which the right to take water from such works is based, (7) the source of supply from which such water is diverted, and, (8) the date of the priority which such user is prepared to establish. Such notice and such written proof as may be required to be submitted by such user shall be upon forms furnished by the State Engineer, and such statements shall be sworn to by such user and be supported by the affidavits of two disinterested witnesses.

Upon receipt of such notice by the State Engineer, he shall order its publication in some newspaper designated by such user and published in the county in which the major portion of such land is situated, for a period of four weeks, and shall fix a date when such proof

shall be submitted and name a place where such proof will be received. Such date shall be subsequent to the completion of such publication, and such Engineer shall, on or before the date set for such final proof, examine, or cause to be examined, (1) the place where such water is used, and, if the use is for irrigation, he shall ascertain the area and location of the land irrigated and the nature of all the improvements which have been made as a direct result of such use, (2) the capacities of the ditches or canals or other means by which such water is conducted to such place of use, and the quantity of water which has been beneficially applied for irrigation or other purposes. The State Engineer or the person making such examination under the direction of such Engineer shall also, on the date set for such final proof, receive the written statements made by the person or persons submitting such proof, and the affidavits of the witnesses, which statements and affidavits, together with a report of the investigation which he is instructed to make, shall be forwarded at once to the State Engineer: *Provided*, That whenever several of such final proofs shall be offered from the same locality, such Engineer shall arrange, whenever practicable, to have such notices for publication combined, and to have such examinations made by the same person and on the same date, as near as may be, with a view of minimizing the expense of taking such proofs, and such publication shall be at the expense of the person or persons submitting such proof.

Historical: Laws 1903, 223, Sec. 7.

Issuance of License: Priority.

Sec. 3261. Upon receipt by the State Engineer of all the evidence in relation to such final proof, it shall be his duty to carefully examine the same, and if he is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, he shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the State Engineer, and shall state the name and postoffice address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water. Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed; the date of the completion of such works; the capacity of such works on such date of completion; the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license, which shall be the date of the application for the permit for the construction of the works from which such water is taken, and to which such right relates. All the licenses which relate to the same permit and which bear the same date of priority shall be numbered alike, and shall belong to the same class, and all the rights relating to the same source of supply shall be numbered numerically in the order of the priority of such rights: *Provided*, That whenever proof of the beneficial application of water shall be offered subsequent to the date

stated in the permit when such beneficial application shall be made, such proof shall be taken, and if satisfactory to the State Engineer, a license shall be issued by such Engineer the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the right established by such proof shall not date back to the date of the application for the permit to which such right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of such application, a time equal to the difference between the date set in such permit for such beneficial application of such water and the date of such proof.

Historical: Laws 1903, 223, Sec. 8.

Effect of License.

Sec. 3262. Such license shall be binding upon the State as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right; and all rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted. The right to continue the beneficial use of such waters shall never be denied nor prevented for any cause other than the failure, on the part of the user or holder of such right, to pay the ordinary charges or assessments which may be made or levied to cover the expenses for the delivery or distribution of such water, or for other reasons set forth in this title: *Provided*, That when water is used for irrigation, no such license or decree of the court allotting such water shall be issued confirming the right to the use of more than one second foot of water for each fifty acres of land so irrigated, unless it can be shown to the satisfaction of the State Engineer in granting such license, and to the court in making such decree, that a greater amount is necessary, and neither such licensee nor any one claiming a right under such decree, shall at any time be entitled to the use of more water than can be beneficially applied on the lands for the benefit of which such right may have been confirmed, and the right to the use of such water confirmed by such license shall always be held subject to the local or community customs, rules and regulations which may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules or regulations have for their object the economical use of such water.

Historical: Laws 1903, 223, Sec. 9.

Fees of Engineer.

Sec. 3263. Upon the issuance of a certificate by the State Engineer in relation to the completion of any canal, ditch or other works constructed under the provisions of this chapter, a fee, to cover the expense of the examination of such works, shall be paid to the State Engineer by the person or persons submitting the proof of such completion. For all ditches or canals having a capacity of ten cubic feet per second or less, such fee shall be five dollars. For all ditches or canals having a capacity of more than ten cubic feet per second, such

fee shall be at the rate of thirty cents for each second foot of such capacity. For examining the ditches and lands of the user at the time of making final proof of the application of water, a fee of two dollars shall be paid to the State Engineer, at the time of making such proof, for each legal subdivision of forty acres or fraction thereof to which such water may have been applied. For examining the ditches or other works and the place where such water is used, when such use is not for irrigation, a fee of five dollars shall be paid the State Engineer at the time of making such examination and taking the proof of such use: *Provided*, That in the case of water used for irrigation, where two or more users whose lands join or who take water from the same common lateral, join in the publication of the notice of their intention to make such proof of application, a fee of one dollar for each legal subdivision of forty acres or fraction thereof receiving such water shall be paid to the State Engineer at the time of making such proof. For making certified copies of any papers on file in his office, the State Engineer shall charge a fee at the rate of twenty cents per folio. All fees received by the State Engineer under the provisions of this chapter shall be recorded in a fee book, and shall at once be turned over to the State Treasurer and placed in the general fund of the State.

Historical: Laws 1903, 223, Sec. 10;
amended Laws 1905, 174, Sec. 1.

Abandonment: Change of Plan of Use.

Sec. 3264. All rights to the use of water acquired under this chapter or otherwise, shall be lost and abandoned by a failure, for the term of five years, to apply it to the beneficial use for which it was appropriated, and when any right to the use of water shall be lost through non-use or abandonment, such right to such water shall revert to the State and be again subject to appropriation under this chapter: *Provided*, That any person owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of this chapter, may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same, and transfer the same to their land. Such person desiring to change the place of use of such water shall first make application to the State Engineer, stating fully in such application the reasons for making such transfer. Such application shall describe the land, the use of the water on which is to be abandoned, and shall describe the land to which it is desired to have such right transferred, and if such water is to be conducted to such land through another canal or lateral or from a different point of diversion than the one described in the license or decree of the court confirming such right, such facts shall be fully set out in such application, and, if the State Engineer shall require it, a plat showing the location of such land and ditches or canals or points of diversion shall be furnished by such applicant, and upon receipt of such application, the State Engineer shall examine the same and shall, provided no one shall be injured by the transfer, issue to such applicant, under the seal of his office, a certificate authorizing such transfer, which certificate shall state the

name of the applicant, and shall contain a copy of the license or an abstract of the decree confirming the right to the use of the water upon the land from which it is desired to transfer such right, and a description of the land to which such right is transferred. A fee of one dollar shall be paid the State Engineer by such applicant for such certificate of transfer issued by him, and such application shall be recorded by the State Engineer in a book for that purpose, and a notice that such transfer has been authorized shall be sent by the State Engineer to the water commissioner of the district in which such land is situated, and such water commissioner shall notify the water master of the stream furnishing water for the irrigation of such lands of the transfer of such use, and such water master shall not thereafter divert, on to the lands the water for which has been so abandoned, any of such water, but shall divert such water from such stream so that it may be used on the lands to which such right has been transferred: *Provided, further,* That any person or persons who are owners by decrees of court or by appropriation of a water right, and who have, with reasonable diligence, annually increased the beneficial use of the water covered by such water right, or who do hereafter, with reasonable diligence, annually increase the beneficial use of the water held under such water right, shall not be subject to the penalties of abandonment and loss by non-use of such water right, as provided in this section.

Historical: Laws 1903, 223, Sec. 11;
amended Laws 1905, 27, Sec. 1;
amended Laws 1907, 507, Sec. 1.

Protest Against License: Appeal From Decision.

Sec. 3265. Any person desiring to protest against the statements made by the person or persons submitting proof of the beneficial application of water in the published notice of their intention to submit such proof, shall file a statement with the State Engineer on or before the date set for such proof, stating clearly the reason for such protest, and stating the reason, if any, why a license should not be issued confirming the right claimed. Such protest shall be based solely upon the statements in such notice and shall be sworn to by such protestant.

In issuing a license confirming any right to use water for beneficial purposes, the State Engineer shall be governed in his actions by the records relating to works from which such water is taken which may be on file in his office, and by the reports of the examination of such works, the place where such water is used, and the extent of such use as made by such Engineer or his representative. Such license may confirm such claim in whole or in part, or such license may be refused, such determination depending upon the extent to which such claim is supported by such records, and such examination of the conditions relating to such use made on the ground under the authority of such State Engineer. If the State Engineer shall refuse to issue a license, the reasons for such refusal shall be recorded in a book kept for the purpose: *Provided,* That any one feeling himself aggrieved by the statements contained in the license issued by the State Engineer, or his refusal to issue such license, may appeal therefrom to the District Court of the county in which the place of use

of the water claimed shall be situated. Such appeal shall be taken within sixty days from the date of such license or the refusal to issue such license, and shall be perfected when the appellant shall have filed in the office of the clerk of such District Court a copy of the license, or, if such license shall not have been issued, a copy of the statement made by the State Engineer giving the reasons why such license was not issued, a copy of the protests against the issuing of such license filed in the State Engineer's office, and a copy of the report of the examination of the place of use of such water made under the authority of the State Engineer, and of other documentary proof in relation to such use which may be filed in the office of such Engineer. Such copies of licenses, reports, protests and other proof shall be certified by the State Engineer as true copies. Such copies shall be filed in the office of such clerk together with a petition to such court setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, and such like proofs as shall be adduced by the State Engineer or some person duly authorized in his behalf.

Historical: Laws 1903, 223, Sec. 12.

State Engineer to Examine Streams.

Sec. 3266. It shall be the duty of the State Engineer, or some qualified assistant, to proceed, as soon as may be after the passage of this chapter, to make an examination of the streams of the State (beginning with those whose waters have not yet been allotted), and the works diverting water therefrom, said examination to include the measurement of the discharge of said streams and the carrying capacity of the various ditches and canals diverting water therefrom; an examination of the irrigated lands, and an approximate measurement of the lands irrigated or susceptible of irrigation from the various ditches and canals, which said observations and measurements shall be reduced to writing and made a matter of record in his office, and it shall be the duty of the State Engineer to make, or cause to be made, a map or plat on a scale of not less than one inch to the mile, showing, with substantial accuracy, the course of the stream, the location of each ditch or canal diverting water therefrom, and the legal subdivisions of land which have been irrigated, and he shall also note on such map the lands which are susceptible of irrigation from the ditches and canals already constructed. Such examination shall be made as rapidly as possible to include all the streams used for irrigation in the State. The State Engineer shall indicate on such map the lands the water rights for which have been adjudicated by the courts, noting on each tract the number of the priority of such rights, and whenever an application for a permit to appropriate water from a stream shown on such map shall be allowed, such Engineer shall indicate on such map the line of such canal or ditch or other works, and indicate by appropriate colors the lands to be irrigated by such works, and shall note thereon the number of such permit. Whenever proof is made that water has been beneficially applied from such works to any of such lands, and license shall be issued for the same as in this chapter provided, the number of such license so issued shall be at once noted on such map on the subdivision of such lands

to which such license shall relate, and all these and other facts relating to the development of irrigation on such stream shall be carefully posted on such map.

Historical: Laws 1903, 223, Sec. 33.

Constitutionality: It is the duty of the State Engineer to examine streams and diversion works, beginning with streams the waters of which have not been adjudicated by decree of court. The work to be done by the Engineer under this section is to be paid for by

the State and is partly for the purpose of making a permanent record of the water appropriations and rights to the use thereof. The section is constitutional. *Boise Irr. etc. Co. v. Stewart* (1904) 10 Ida. 38; 77 Pac. 25, 321.

CHAPTER 3.

DISTRIBUTION OF WATER AMONG APPROPRIATORS.

Section

- 3268. Water divisions: Establishment and boundaries.
- 3269. Water commissioners. Appointment and qualifications.
- 3270. Same: Duties.
- 3271. Same: Compensation.
- 3272. Same: Oath and bond.
- 3273. State Board of Irrigation.
- 3274. Creation of water districts.
- 3275. Appointment and duties of water masters.
- 3276. Reports of water masters.
- 3277. Distribution of water.

Section

- 3278. When water master shall begin work.
- 3279. Water master may employ assistants.
- 3280. Compensation of water masters.
- 3281. Same: Payment and collection from water users.
- 3282. Headgates and measuring devices.
- 3283. Rules governing distribution of water.

Water Divisions: Establishment and Boundaries.

Sec. 3268. For the purpose of administering and controlling the public waters, the State of Idaho is hereby divided into three water divisions denominated water division No. 1, water division No. 2, water division No. 3.

Water division No. 1 shall consist of all lands within this State drained by the Snake River and its tributaries as far west as American Falls, and all lands within this State drained by Bear River and its branches, and by other streams flowing on the slope of the Salt Lake Basin.

Water division No. 2 shall consist of all lands within this State drained by Snake River and its tributaries on the south side from Bruneau River and by the Snake River and its tributaries on the north side from American Falls to and including the Malad River, also all lands within this State drained by the streams flowing toward and sinking near the northern edge of the Snake River plains, and the lands in this State drained by the Salmon River and its tributaries as far west as the South Fork of said river.

Water division No. 3 shall consist of all lands within this State drained by the Snake River and its tributaries on the south side from the mouth of the Bruneau River to and including the Owyhee River, and by the Snake River and its tributaries on the north side from the mouth of the Malad River to and including the Clearwater River, excepting that portion of the water shed of the Salmon River included in water division No. 2, and all that portion of the State lying north of the water shed of said Clearwater River.

Historical: Laws 1903, 223, Secs. 13, 14, 15, 16.

Water Commissioners: Appointment and Qualifications.

Sec. 3269. There shall be appointed one water commissioner for each of the water divisions by this chapter created, who shall be appointed by the Governor, with the consent of the Senate, and who may be removed for cause. Said water commissioners shall each be appointed to hold office for a period of six years, or until their successors are appointed and shall have qualified, one commissioner retiring and his successor being appointed each odd numbered year: *Provided*, That the present commissioners shall hold office until the expiration of their respective terms. Such water commissioners shall possess such theoretical knowledge of the science of hydraulics as will enable them to supervise the construction of such measuring devices as may be necessary to place in any ditch, canal or stream for the proper measurement of the water. They shall be acquainted with the streams of their divisions and shall be capable of instructing the water master who may be placed in charge of such streams in all matters in relation to the distribution of the water of such streams in accordance with the priorities of the rights of those using such waters.

Historical: Laws 1903, 223, Secs. 17, 18. Rewritten so as to omit the provision for the appointment of the first

commissioners, and to preserve the terms of office of the present commissioners.

Same: Duties.

Sec. 3270. Each commissioner shall reside in the water division for which he is appointed. The commissioner of each water division shall have immediate direction and control of the acts of the water masters, and of the distribution of water from all the streams to the canals diverting therefrom in his division, and shall perform such duties as shall devolve upon him as a member of the Board of Irrigation. He shall also, under the general supervision of the State Engineer, execute the laws relative to the distribution of water in accordance with the rights of priority of appropriation. He shall also, when so directed by the State Engineer, receive proof of completion, and make inspection and examination as provided in Section 3258 of this title, of works for the diversion and application of water under any permit, where the point of diversion of said works is located within the boundaries of his division; and he shall also, when so directed by the State Engineer, receive proof of beneficial use of waters diverted under the provisions of this title in cases where the majority of the lands benefited by the diversion works in question lie within the boundaries of his division.

Historical: Laws 1903, 223, Sec. 19; amended Laws 1905, 357, Sec. 3.

Same: Compensation.

Sec. 3271. Each water commissioner shall be paid ten dollars per day for every day actually consumed in the performance of his duties as such water commissioner: *Provided*, That no commissioner shall be employed in the duties of his office for more than one hundred and eighty days during each year. For services performed as member

of the Board of Irrigation he shall be paid by the State Treasurer, upon warrants drawn by the State Auditor for the time actually spent in performing his duties as a member of such board, as shown by an itemized bill certified to by the State Engineer. For services performed in supervising the distribution of the public waters of the streams within his division, he shall be paid by the county in which such duties are performed, and shall present a sworn statement to the board of county commissioners, at a regular meeting of said board, which statement shall show the time spent and the duties performed, and the said board shall pay such bill by issuing to said commissioner a warrant drawn on the current expense fund of the county.

Historical: Laws 1903, 223, Sec. 20.

Same: Oath and Bond.

Sec. 3272. Before entering upon the duties of his office each water commissioner shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform the duties of his office, and shall file with the Secretary of State said oath and his official bond in the penal sum of five thousand dollars, with not less than two sureties to be approved by the Governor of the State, and conditioned for the faithful discharge of the duties of his office.

Historical: Laws 1903, 223, Sec. 21.

State Board of Irrigation.

Sec. 3273. There is hereby constituted a State Board of Irrigation, composed of the State Engineer and the water commissioners of the three water divisions. Said board shall have an office with the State Engineer in the Capitol at Boise, and shall hold one meeting each year for the transaction of such business as may come before it, which meeting shall begin on the first Monday in March: *Provided*, No meeting of said board shall exceed five days. The State Engineer shall be ex-officio president of said board, and shall have the right to vote on all questions coming before it, and a majority of all the members of the said board shall constitute a quorum to transact business: *Provided*, That all acts of said board shall be approved by a majority of its members. The commissioner of water division No. 3 shall be the secretary of the State Board of Irrigation, and it shall be his duty to keep a full, true and complete record of the transactions of said board. Such meeting of such State Board of Irrigation may be held at any place in the irrigated portion of the State which may be selected by the State Engineer for such meeting, and such Board of Irrigation shall provide rules and regulations in relation to making of proof of completion of works constructed under the provisions of this title, and of the proof of application of the water as provided for in this title, and shall also devise all needful rules for the distribution of water from the streams in accordance with the priorities of the rights of the users thereof. And such commissioners shall, on or before the first day of December of each year, submit to the State Engineer a report of work done by them in their districts, and shall recommend such changes in the irrigation laws and rules and regula-

tions governing the diversion of waters as would, in their judgment, be beneficial to the people of the State.

Historical: Laws 1903, 223, Sec. 22.
Omitting the provision for the first

(1903) meeting of the board, as now
obsolete.

Creation of Water Districts.

Sec. 3274. The Board of Irrigation shall divide the State into water districts, said water districts to be so constituted as to secure the best protection to the claimants for water, and the most economical supervision on the part of the State. The water districts which shall be first created are those which will embrace the streams whose waters have already been allotted by the District Court, the distribution of which shall, by the provisions of this chapter, be under the control of the water commissioners of the divisions in which such stream or streams are situated. Other districts shall be created from time to time as the appropriations and priorities thereof from the streams of this State shall be confirmed or adjudicated: *Provided*, That when any company or association owning irrigation works whose water supply is not distributed under a sale or rental thereof, shall petition the water commissioner to appoint a water master to take charge of the distribution of the water from such works, such water master shall be appointed, and he shall deliver to each user the quantity of water to which he may be entitled; and such water master so appointed shall be paid for such services in the manner provided in Sections 3279 and 3280: *Provided*, In the case of a stream whose waters have been allotted, when the distance between the extreme points of diversion of such stream is not more than thirty miles, the users of water from such stream may elect a water master to distribute the water of such stream, and fix his compensation therefor in the manner provided in the following section for the election of water masters.

Historical: Laws 1903, 223, Sec. 23;
amended Laws 1907, 532, Sec. 2.

Appointment and Duties of Water Masters.

Sec. 3275. For each water district created under the provisions of this chapter, there shall be appointed, on or before the first day of March of each year, one water master, who shall be appointed by the commissioner of the division in which the water district is situated. Each water master shall hold office for one year, or until his successor is appointed and shall have qualified. The said water commissioner may, at any time, remove any water master for failure to perform his duty as such water master, upon complaint in that respect being made to him in writing.

Before entering upon the duties of his office, said water master shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform the duties of his office, and shall file, with the clerk of the District Court in the county in which said water master resides, said oath and his official bond in the penal sum of five hundred dollars, with not less than two sureties, to be approved by the judge of the probate court of the county in which he resides, and conditioned for the faithful dis-

charge of the duties of his office: *Provided*, That any vicinity or neighborhood, the inhabitants of which use the waters of any ditch, stream or spring for the purpose of irrigation, or have or claim a common right to the waters of any ditch, stream or spring for such purpose, provided the waters so claimed or used have not been allotted to the individual users thereof, shall constitute a water district, and a majority of such water users having such common right may, annually on the third Monday of February at a meeting of such inhabitants, elect a water master for such district whose duty it shall be to superintend the distribution of such waters among those having such common right, or accustomed to participate in such common use. The water master of the district, or if there be no water master, or upon his failure or neglect to do so, any six residents of the district entitled to such common right, must give three days' public notice of the time and place of such election, by placing printed or written notices thereof in three of the most public places in the district. Said meeting must be opened at ten o'clock in the forenoon, and the majority of those present who are entitled to such common right may organize the same and determine the manner of such election, and whether the same shall be by ballot or otherwise.

The water master must execute to the county in which his district is situated, and file in the office of the county recorder for the benefit of any person who may be injured by his wanton or illegal act or omission as such, a bond in the sum of five hundred dollars, with two sufficient sureties which shall be approved by the judge of the probate court of the county in which such district is situated, and conditioned for the faithful and impartial discharge of his duties as water master of his district, and any person so injured may have an action on such bond in his own name for his actual damages. Such water master may employ one or more deputies as authorized by the inhabitants of his district claiming such common right as aforesaid, and he is liable for their wanton or illegal acts upon his official bond, and before entering upon their duties the water master and his deputies must take and subscribe an oath, before any magistrate, to faithfully discharge the duties of their office, and they may receive such compensation, to be paid in such manner, as may be agreed upon with such users, and shall have the same power as the water masters appointed by the water commissioners under the provisions of this section. Said elected water master shall be under the direction and authority of the said water commissioner.

Such water master and his deputies must regulate the distribution of water among the several ditches of his district, and among the several water users who are entitled and accustomed to the use thereof, according to their respective rights and necessities, and when the quantity of water is not sufficient to afford a full supply to those entitled or accustomed to use the same, according to the usage of the district, such water master and his deputies must regulate the quantity used by each person, and the time at and during which each person may use the same; and such customs or usage must be upheld by the said water commissioners and by the courts of the State, when such customs have for their object the economical distribution of the waters of such district: *Provided*, Nothing in this

section must be so construed as to interfere with the vested rights of individuals, companies or corporations, or in any manner to interfere with the rights of individuals, companies or corporations, to the use and control of water, the right to the use of which is or may be their private property.

Historical: Laws 1903, 223, Sec. 24.

Duties of Water Master: The water master cannot be required to go beyond the provisions of the decree to ascertain whether or not the same is supported by the findings or whether

there is a conflict between the findings and decree, but he can look only to the decree for his instructions as to the amount of water to be distributed to each claimant. *Stethem v. Skinner* (1905) 11 Ida. 374; 82 Pac. 451.

Reports of Water Masters.

Sec. 3276. All water masters shall make reports to the water commissioner of their division as often as may be deemed necessary by said commissioner. Said reports shall contain the following information: The amount of water necessary to supply all the ditches, canals and reservoirs of the district; the amount of water actually coming into the district to supply such ditches, canals or reservoirs, whether such supply is on the increase or decrease; what ditches, canals and reservoirs are at times without their proper supply, and the probability as to what the supply will be during the period before the next report will be required, and such other information as the water commissioner of the division may suggest. Said water commissioner shall carefully file and preserve such reports, and shall from them ascertain what ditches, canals and reservoirs are, and what are not, receiving their proper supply of water, and if it shall appear that in any district of that division, any ditch, canal or reservoir is receiving water whose priority post-dates that of the ditch, canal or reservoir in another district as ascertained from his register, he shall at once order such post-date ditch, canal or reservoir shut down, and the water given to the elder ditch, canal or reservoir, his orders being directed at all times to the enforcement of priority of appropriation, according to his tabulated statement of priorities, to the whole division, and without regard to the district within which the ditches, canals or reservoirs may be located. The reports of water masters to the water commissioners of irrigation shall be filed and kept in the office of the State Engineer.

Historical: Laws 1903, 223, Sec. 25.

Distribution of Water.

Sec. 3277. It shall be the duty of said water master to divide the water in the natural stream or streams of his district among the several ditches taking water therefrom, according to the prior rights of each respectively in whole or in part, and to shut and fasten, or cause to be shut and fastened, under the direction of the water commissioner of his water district, the headgates of ditches heading in any of the natural streams of the district, when, in times of scarcity of water, it is necessary so to do by reason of priority of rights of others taking water from the same stream or its tributaries.

Historical: Laws 1903, 223, Sec. 26.
First part of section. The last half

which is penal in effect, constitutes
Sec. 7148a of the Penal Code.

When Water Master Shall Begin Work.

Sec. 3278. Said water masters shall not begin their work until they have been called upon by two or more owners or managers of ditches, or persons controlling ditches, in the several districts, by application in writing, stating that there is a necessity for the use of water, and they shall not continue performing services after the necessity therefor shall cease.

Historical: Laws 1903, 223, Sec. 27.

Water Master May Employ Assistants.

Sec. 3279. Said water master shall have power, in case of emergency, with the approval of the water commissioner, to employ suitable assistants to aid him in the discharge of his duties, who shall take the same oath as the water master, and shall obey his instructions, and shall be entitled to not to exceed three dollars per day for every day they are employed, to be paid upon certificates of the water commissioner in the same manner as provided for the payment of water masters: *Provided*, That not more than one assistant shall be appointed to each twenty miles of the stream whose waters have been allotted.

Historical: Laws 1903, 223, Sec. 28.

Compensation of Water Masters.

Sec. 3280. Water masters herein provided for, shall each be entitled to pay at the rate of not to exceed four dollars per day, for each day he shall be actually employed in the duties of his office. Said water master shall make up a sworn statement, which shall be approved by the water commissioner, and shall show the number of days said water master has devoted to the distribution of such water, and the number of days his assistant or assistants have devoted to the same purpose, and such statement shall also show the volume of water, stated in cubic feet per second, he has, by virtue of the allotment of said waters, delivered to each user each day, and shall describe the lands to which said water was so delivered. The pay for the services of said water master and his assistants shall be a charge against the land of the users to which said water was so delivered, the expense for said services being first divided between all classes as to priority of allotment or decree, in the proportion which the number of days such water is received by all users in the same class of priority of allotment or decree, bears to the whole number of days said water master is engaged in distributing said water; the amount charged to each user in the same class of priority of allotment or decree, bearing the same proportion to the amount charged to all users in the same class of priority of allotment or decree, as the volume of water delivered to each user bears to the whole amount delivered to all of like class of priority of allotment or decree, by the said water master and his assistants. This statement, which shall show the proper distribution of the said expenses among the various users, shall be filed with the auditor and recorder of the county or counties in which the said water was delivered: *Provided*, That when any portion of the allotted waters is distributed by said water master to the canal of any duly organized canal company, the amount of the expense chargeable for

such services shall be a charge against such canal, and the amount of such charge to be paid by the county in the manner herein provided, shall be charged as a tax against such canal, which tax shall be collected in the manner provided by law for the collection of other taxes, and no canal in this State shall be exempt from the payment of such tax.

Historical: Laws 1903, 223, Sec. 29;
amended Laws 1907, 482, Sec. 1.

Same: Payment and Collection from Water-Users.

Sec. 3281. A bill, based upon such statement, for the services performed by the said water master and his assistants, shall be presented at a regular meeting of the board of county commissioners, who shall order a warrant issued to said water master or his assistants on the current expense fund of the county. The auditor and recorder of said county shall add to the amounts charged to the land of the users, and to such ditches to which said water was delivered, to the taxes of said land or ditches as may be levied for the following year, which shall be collected along with other taxes, and turned into the current expense fund of the county.

Historical: Laws 1903, 223, Sec. 30.
"Levied" inserted before "for the following year" to complete the sense.

Headgates and Measuring Devices.

Sec. 3282. The appropriator of any of the public waters of the State shall maintain, to the satisfaction of the water commissioner of the district in which such appropriation is made, a substantial headgate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water master or other officer in charge; and such appropriator shall construct and maintain, when required by the water commissioner, a rating flume or other measuring device as near the head of such ditch as is practicable, for the purpose of assisting the water master in determining the amount of water that may be diverted into said ditch from the stream. Plans for such rating flumes or other measuring devices shall be furnished by the State Engineer. It shall also be the duty of those taking water from a stream whose waters have been allotted, to place at suitable intervals on said stream, under the direction of the water commissioner of the division in which such stream is situated, suitable measuring devices, so that the flow of such stream may be properly measured. If any user or appropriator of public waters that may or may not have been allotted, should neglect or refuse to put in such headgates or measuring devices as will provide for the proper distribution of said water according to the rights of the several parties entitled to the use thereof, after ten days' notice to do so by the water commissioner, it shall be the duty of said commissioner to put in such headgates, flumes or measuring devices, at the expense of the county where the expense is incurred, and said water commissioner shall make up a sworn statement of the cost of such headgates, flumes or measuring devices, which shall be presented to the board of county commissioners at their first regular meeting after the performance of such work, and said county commissioners

shall present a bill of costs to the owners of said ditch or ditches: *Provided*. That if the owner of any such ditch shall refuse or neglect for ten days after the presentation of such bill of costs to pay the same, or any other charge made against such ditch or the owner thereof under the provisions of this chapter, the water commissioner shall order the headgate of such ditch closed and locked, and such headgate shall remain closed and locked until such charge or charges shall be paid.

Historical: Laws 1899, 223, Sec. 31.

Rules Governing Distribution of Water.

Sec. 3283. Such water commissioner shall, in the distribution of water from the streams to the canals, be governed by this title and the practices followed by the irrigators on the various streams and under the various ditches in his division, where such practices have for their object the economical use of the common water supply, but, for the better discharge of his duties, he shall have full authority to enforce such other regulations as may be devised by the Board of Irrigation as will secure the equal and fair distribution of water, and tend to reduce the waste or loss from seepage or evaporation during irrigation to the minimum, or increase the efficiency of the quantities allotted to the irrigators.

Historical: Laws 1903, 223, Sec. 32.

CHAPTER 4.
DISTRIBUTION TO CONSUMERS.

Section	Section
3284. Appointment of water master.	3289. Company to furnish water on demand.
3285. Injuring ditch or headgate.	3290. Application for water.
3286. Water companies to furnish headgates and measuring devices.	3291. Sale or rental constitutes a dedication .
3287. Division of land into classes by priority.	3292. Consumer's title not affected by transfer of ditch.
3288. Companies to deliver water as agreed: Users from common lateral.	3293. Liability for waste of water.

Appointment of Watermaster.

Sec. 3284. It shall be the duty of those owning or controlling any ditch, canal or conduit to appoint a superintendent, or water master, whose duty it shall be to measure the water from such ditch, canal or conduit through the outlets of those entitled thereto, according to his or her pro rata share.

Historical: Laws 1899, 380, Sec. 17.

Injuring Ditch or Headgate.

Sec. 3285. Any person who, without the consent of the water master of the district, diverts any water from the ditch or channel where it was placed, or caused, or left to run by the water master or his deputies, or who shuts or opens any ditch, gate or dam with intent so to divert any water, and thereby deprive any person of the use of the same during any part of the time he is entitled to such use, or

who, without the consent of the water master, cuts any ditch or the banks thereof, or breaks or destroys any gate or flume, is liable in a civil action to any person injured thereby in three times the actual damage sustained in consequence of any such wrongful act or acts.

Historical: Rev. St. 1887, Sec. 3205. 11 Ter. Ses. (1881) 275. Omitting the words "is guilty of a misdemeanor",

which are superseded by Laws 1899, 336, Sec. 3 (Code Sec. 7144b) defining the same offense.

Water Companies to Furnish Headgates and Measuring Devices.

Sec. 3286. Any person, association or corporation delivering or distributing water under any fixed annual charge or rental, shall provide the necessary gates and measuring devices to render possible and practicable a measurement of the quantity of water being delivered to any consumer (or number of consumers using a common lateral or distributing ditch); and the price charged for the annual use of the water so distributed shall be in proportion to the quantity of water delivered from the works of such person, association or corporation. Such measuring devices shall be of such a character, and provided with such gauges or scales, that the quantity of water being delivered at any time can be ascertained by inspection; and shall be of such general plan as shall meet with the approval of the State Engineer, who shall inspect any such devices whenever possible to ascertain their character, and he shall furnish such general information and instructions to any consumer, or the water master of any number of consumers of water, as may be necessary to enable him to ascertain the quantity of water flowing through any such measuring device.

Historical: Laws 1897, 127, Sec. 2. Omitting the provisos; the first was repealed by the general repealing clause of Laws 1899, 408, Sec. 59; the second was temporary in its application, and the third, providing for the

publication of regulations and appeals to the District Court, conflicts with the scheme of control by the county commissioners prescribed by Laws 1899, 380.

Division of Land Into Classes by Priority.

Sec. 3287. When any ditch, canal, or reservoir delivering or distributing water to several users, has one or more rights or priorities by reason of enlargements made from time to time, the right of the land being irrigated by such works shall be divided into classes; rights of the first class belonging to those lands reclaimed between the dates of the first and second priorities or rights of such works; rights of the second class belonging to those lands reclaimed between the dates of the second and third priorities of such works; rights of any other class being determined in like manner; but all the rights belonging to the same class shall be equal and subject alike to the regulations of their respective class.

Historical: Laws 1901, 191, Sec. 9a.

Companies to Deliver Water as Agreed: Users From Common Lateral.

Sec. 3288. Any person, association or corporation which may contract to deliver a certain quantity of water to any party or parties, shall deliver the same to such party or parties, together with a reasonable and necessary allowance for loss by evaporation and seepage,

at some convenient point on the main ditch, canal or reservoir of said person, association or corporation, or on any branch or lateral thereof belonging to the owner or owners of such ditch, canal or reservoir. Where two or more parties take water from said ditch, canal or reservoir at the same point, to be conveyed to their respective premises for any distance through the same lateral or distributing ditch, such parties shall, on or before April first of each year, select some person to have charge during the succeeding season of the distribution of water from such lateral, whose duty it shall be to ascertain and see that the amount of water to which each of the parties interested is entitled is properly apportioned and distributed. It shall be his further duty to see that the said person, association or corporation contracting to furnish such water shall deliver the amount as provided in this section; and, in case of dispute between such person and the said person, association or corporation as to the quantity of water to be delivered, or the amount actually delivered, the matter shall be referred to the State Engineer. The parties entitled to said water shall keep their ditches and laterals in good condition for carrying and distributing the same. In case the parties entitled to the use of water as in this section stated shall neglect or refuse to perform the duties imposed upon them by this section, they shall have no cause for damage against the person, association or corporation furnishing said water for failure to properly furnish and distribute the same.

The amount to be paid by said party or parties for the delivery of said water, which amount may be fixed by contract, or may be as provided by law, is a first lien upon the land for the irrigation of which said water is furnished and delivered. But if the title to said tract of land is in the United States or the State of Idaho, then the said amount shall be a first lien upon any crop or crops which may be raised upon said tract of land, which said lien shall be recorded and collected as provided by law for other liens in this State. And any mortgage or other lien upon such tracts of land that may hereafter be given, shall in all cases be subject to the lien for price of water as provided in this section.

Historical: Laws 1895, 174, Sec. 17. This section was not included in or covered by Laws 1899, 380, and does not seem to conflict therewith. It is

therefore retained, although opinions may differ as to whether it is still in force.

Company to Furnish Water on Demand.

Sec. 3289. Any person, company or corporation owning or controlling any canal or irrigation works for the distribution of water under a sale or rental thereof, shall furnish water to any person or persons owning or controlling any land under such canal or irrigation works for the purpose of irrigating such land or for domestic purposes, upon a proper demand being made and reasonable security being given for the payment thereof: *Provided*, That no person, company or corporation shall contract to deliver more water than such person, company or corporation has a title to, by reason of having complied with the laws in regard to the appropriation of the public waters of this State.

Historical: Laws 1899, 380, Sec. 19.

Cross Reference: Penalty for neglect to deliver water: Sec. 7149.

Action to Compel Delivery: An applicant for the use of water who has complied with the provisions of this act and who is refused water, although the company has sufficient unsold water to supply him, is entitled to a writ of mandate to compel the delivery of water. *Bardsley v. Boise Irr. Co.* (1901) 8 Ida. 155; 67 Pac. 428. But the complaint must allege a demand and must tender compensation or security for the payment of the charges for delivery: it is insuffi-

cient to allege that the plaintiff offered to secure the payment of such charges. *Ib.*

Remedies of Water Company: This section does not repeal Rev. St. Sec. 3203 (Code Sec. 3311), and a water company which delivers water to a consumer without demanding prepayment of the charges therefor, may sue at law to recover the amount of such charges already earned by it, but cannot shut off the consumer's water because he refuses to make payment. *Shelby v. Farmers' etc. Ditch Co.* (1905) 10 Ida. 723; 80 Pac. 222.

Application for Water.

Sec. 3290. Any person or persons owning or controlling land which has or has not been irrigated from any such canal, shall on or before January first of any year, inform the owner or person in control of such canal whether or not he desires the water from said canal for the irrigation of land during the succeeding season, stating also the quantity of water needed. In distributing water from any such canal, ditch or conduit during any season, preference shall be given to those applications for water for land irrigated from said canal the preceding season, and a surplus of water, if any there be, shall be distributed to the lands in the numerical order of the applications for it. But no demand for the purchase of a so called "perpetual water right", or any contract fixing annual charges or the quantity of water to be used per acre, shall be imposed as a condition precedent to the delivery of water annually as provided in this chapter; but the consumer of water shall be the judge of the amount and the duty of the water required for the irrigation of his land; and the annual charges to be made and to be fixed under the further provisions of this title, shall hereafter be based upon the quantity of water delivered to consumers, and shall not in any case depend upon the number of acres irrigated by means of such amount of water delivered.

Historical: Laws 1899, 380, Sec. 20.

Cited: *Bardsley v. Boise Irr. etc. Co.* (1901) 8 Ida. 155; 67 Pac. 428.

Application: This section has no application to a case where all prior applications for water have been supplied and the ditch company still has

water for rental and distribution, and in such case an applicant may enforce the delivery of water, although he did not make his application prior to January 1st. *Helphry v. Perrault* (1906) 12 Ida. 451; 86 Pac. 417.

Sale or Rental Constitutes a Dedication.

Sec. 3291. Whenever any waters have been or shall be appropriated or used for agricultural or domestic purposes under a sale, rental or distribution thereof, such sale, rental or distribution shall be deemed an exclusive dedication to such use upon the tract of land for which such appropriation or use has been secured, and, whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors or assigns, shall not thereafter be deprived of the annual use of the same when needed for agricultural or do-

mestic purposes upon the tract of land for which such appropriation or use has been secured, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use as may be prescribed by law. "Domestic purposes" shall not be construed to include any manner of land irrigation. Any person, association or corporation violating any of the provisions of this section, shall be liable for all damage to any party or parties injured thereby, which damage shall be determined by the proper court.

Historical: Laws 1895, 174, Sec. 14. This and the following section are not included in or covered by Laws 1899, 380. But they do not conflict with any provision of that act and are therefore retained.

Cross Reference: Similar provision: Const. Art. 15, Sec. 4.

Conditions of Use—Determination: The terms and conditions upon which a person is to be entitled to the use of water from a ditch or canal company are to be determined by the courts. *Wilterding v. Green* (1896) 4 Ida. 773; 45 Pac. 134.

Consumer's Title Not Affected by Transfer of Ditch.

Sec. 3292. When any payment is made under the terms of a contract, by means of which payment a perpetual right to the use of water necessary to irrigate a certain tract of land is secured, said water right shall forever remain a part of said tract of land, and the title to the use of said water can never be affected in any way by any subsequent transfer of the canal or ditch property or by any foreclosure or any bond, mortgage or other lien thereon; but the owner of said tract of land, his heirs or assigns, shall forever be entitled to the use of the water necessary to properly irrigate the same, by complying with such reasonable regulations as may be agreed upon, or as may from time to time be imposed by law. And said payment for said water right shall be a release of any bond or mortgage upon the canal property of the person or company from whom such right is purchased or their successors or assigns, to the amount of such water right thus purchased and paid for, and said person or company from whom such water right is purchased shall furnish to the party or parties purchasing such right, a release, or a good and sufficient bond for a release, from said mortgage, or bonded indebtedness to the amount of the water right thus purchased.

Historical: Laws 1895, 174, Sec. 16.

Liability for Waste of Water.

Sec. 3293. No person entitled to the use of water from any such ditch or canal, must, under any circumstances, use more water than good husbandry requires for the crop or crops that he cultivates; and any person using an excess of water, is liable to the owner of such ditch or canal for the value of such excess; and in addition thereto, is liable for all damages sustained by any other person, who would have been entitled to the use of such excess of water, as fixed by this section.

Historical: Rev. St. 1887, Sec. 3190.
11 Ter. Ses. (1881) 273.

CHAPTER 5.
FIXING WATER RATES.

Section	Section
3294. Application to county commissioners.	3297. Conduct of hearing: Order: Appeal.
3295. Setting date for hearing.	3298. Matters considered in fixing rate.
3296. Service of notice of hearing.	

Application to County Commissioners.

Sec. 3294. The county commissioners of each county now organized, and of each county to be hereafter organized in this State, shall, at their regular session in January of each year and at such other sessions as they in their discretion may deem proper, hear and consider all applications which may be made to them by any party or parties interested in either furnishing or delivering for compensation, or by any person or persons using or consuming, water for irrigation or other beneficial purpose or purposes from any ditch, canal or conduit, the whole or any part of which shall be in such county, which application shall be supported by such affidavit as the applicant or applicants may present, showing reasonable cause for such board of county commissioners to proceed to fix a maximum rate of compensation for water thereafter delivered from such ditch, canal or conduit within such county: *Provided*, That when any ditch, canal or conduit shall extend into two or more counties, the county commissioners of each of such counties shall fix the maximum rate for water used in that county.

Historical: Laws 1899, 380, Sec. 26.	sonable maximum rates for the use of water may be established: Const. Art. 15, Sec. 6.
Cross Reference: The Legislature may provide the manner in which rea-	

Setting Date for Hearing.

Sec. 3295. Every such board of county commissioners shall, upon examination of such affidavit or affidavits, or from the oaths of witnesses thereto, if they find that the facts sworn to show the application to be in good faith, and that there are reasonable grounds to believe that unjust rates of compensation are, or are likely to be, charged or demanded for water from such ditch, canal or conduit, enter an order fixing a day not sooner than ten days thereafter, nor later than twenty days (a special meeting may be called for that purpose), when they will hear all parties interested in such water works aforesaid, or in procuring water therefrom, for any of the said purposes as well as all documentary or oral evidence or depositions taken according to law, touching said ditch or other water works aforesaid, and the cost of furnishing water therefrom.

Historical: Laws 1899, 380, Sec. 27.

Service of Notice of Hearing.

Sec. 3296. At the time so fixed all persons interested as aforesaid, on either side of the controversy, in lands which may be irrigated by such ditch or other water works aforesaid, may appear by themselves or by their agents or attorneys, and said commissioners shall then proceed to take action in the matter of fixing such rates of compensation for the delivery of water: *Provided*, The applicant or appli-

cants, if the application be made by a party or parties as aforesaid desirous of procuring water, shall, within ten days from the time of entering the said order fixing the hearing, cause a copy of such order, duly certified, to be delivered to the owner or owners of such ditch, canal or conduit or to the president, secretary, or agent of the company, if it be owned by a corporation or association having such officers; if any such owner cannot be found, a copy shall be left at the usual place of business of the company of which he is such officer, or at his residence if such company have no place of business. And if such ditch or water works aforesaid shall be owned by several owners, not being an incorporated company, it shall be sufficient to serve such notice by delivering a copy to a majority of them. If the applicant be the owner or party controlling such ditch, canal or conduit, such notice shall be given by causing printed copies of such order in hand bill form, in conspicuous type, to be posted securely in ten or more places throughout the county and section watered by such ditch or other water works aforesaid, if the water be used for irrigation. The person or persons making such services or posting such printed copies shall make affidavit of the manner in which the same has been done, which affidavit shall be filed with the board of county commissioners. Depositions mentioned in the preceding section to be used before said commissioners shall be taken by any officer in the State authorized by law to take depositions, upon reasonable notice being given to the opposite party of the time and place of taking the same.

Historical: Laws 1899, 380, Sec. 28.

Conduct of Hearing: Order: Appeal.

Sec. 3297. Said board of commissioners may adjourn or postpone any hearing from time to time as may be found necessary; but when in session they shall hear and examine all legal testimony or proofs offered by any party interested as aforesaid, as well as concerning the original cost and present value of the works and structure of such ditch, canal or conduit, as well as the cost and expense of maintaining and operating the same, and all matters which may affect the establishment of reasonable maximum rates for water to be furnished and delivered therefrom, and they may issue subpoenas for witnesses which subpoenas shall be served in the same manner in which subpoenas are served in civil cases; and said board may also issue subpoenas for the production of all books and papers required before them. The District Court of the proper county, or the Judge thereof in vacation, may, in case of refusal to obey the subpoenas of the board of county commissioners, compel obedience thereto, or punish for refusal to obey after hearing, as in cases of attachment for contempt of such District Court. Upon hearing and considering all the evidence and facts and matters involved in the case, said board of county commissioners shall enter an order describing the ditch, canal or conduit, or other water works in question, with sufficient certainty, and fixing a just and reasonable maximum rate of compensation for water thereafter delivered from such ditch or other water works as last aforesaid, within the county in which such commissioners act; and such rate shall not be changed within one year from the time when such rate shall be so fixed: *Provided*, That an appeal may be

taken to the District Court from any act, order or proceeding of the board by any person or corporation aggrieved thereby, as in other cases under the general statute of the State of Idaho, governing appeals from an order or proceeding of the board of county commissioners.

Historical: Laws 1899, 380, Sec. 29; amended Laws 1905, 3, Sec. 1.

Cross Reference: Provisions governing appeals from county commissioners: Secs. 1950-1953.

Appeal: This section expressly

confers jurisdiction upon the District Court to hear appeals from orders of boards of county commissioners fixing water rates. *Rust v. Stewart* (1901) 7 Ida. 558; 64 Pac. 222.

Matters Considered in Fixing Rate.

Sec. 3298. In fixing the rates at which water shall be furnished, the board of commissioners shall take into consideration the cost of the works, the expense of keeping the same in repair, and all other conditions that affect the cost of delivering the same. Whenever it shall appear to the board of county commissioners from competent evidence that any consumer or consumers of water distributed through any ditch or canal, is entitled to the distribution or use of any water therefrom, at not to exceed a proportionate amount of the actual cost of maintenance and operation of said ditch or canal, they shall, upon request of such person or persons so entitled, fix the rate per cubic foot per second to be charged to such consumer or consumers for the current year.

Historical: Laws 1989, 380, Sec. 30.

**CHAPTER 6.
RIGHTS OF WAY.**

Section

- 3299. Rights of land owners to water.
- 3300. Right to right of way.
- 3301. Same.
- 3302. Same: Over State lands.

Section

- 3303. Right of way for riparian proprietors.
- 3304. Right of eminent domain.
- 3305. Right to cross ditches.

Rights of Land Owners to Water.

Sec. 3299. All persons, companies, and corporations, owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

Historical: Rev. St. 1887, Sec. 3180.

California Legislation: See Civ. Code 1872, Sec. 1422; Deering's Code, ib.; repealed 1887.

Cited: (Dis. op.) *Drake v. Earhart* (1890) 2 Ida. 750; 23 Pac. 541.

Riparian Rights Repudiated: In the dissenting opinion in *Drake v. Earhart*, supra, Justice Berry cited

this section in support of the application of the doctrine of riparian rights to the irrigation law, but the majority of the court, without citing this section, declared in effect that the doctrine of riparian rights has no place in the jurisprudence of this State.

Right to Right of Way.

Sec. 3300. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall

for a ditch, canal, or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right of way through the lands of others, for the purposes of irrigation: *Provided*, That in the making, constructing, keeping up, and maintenance of such ditch, canal or conduit, through the lands of others, the person, company, or corporation, proceeding under this section, and those succeeding to the interests of such person, company, or corporation, must keep such ditch, canal, or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct, for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

Historical: Rev. St. 1887, Sec. 3181,
11 Ter. Ses. (1881) 269.

Same.

Sec. 3301. Where the owners of any spring, or the appropriators thereof, or of any stream, desire to conduct the waters thereof to any lands for purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object it is necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner above provided.

Historical: Rev. St. 1887, Sec. 3185,
11 Ter. Ses. (1881) 271.

Same: Over State Lands.

Sec. 3302. The right of way over and upon any and all lands owned or controlled by the State of Idaho is hereby granted to any and all persons for the purpose of constructing and maintaining any ditch, canal, conduit or other works for the diversion or carrying of water for any beneficial use: *Provided*, That no property shall be taken under the provisions of this section until a just compensation shall be paid therefor, to be ascertained in the manner prescribed by law for the taking of private property for a public use.

Historical: Laws 1899, 380, Sec. 13.

Cross Reference: Procurement of right of way over State lands: Sec. 1635.

Condemnation of State Lands: This section, taken in conjunction with Re-

vised Statutes, Sec. 5212, authorizes an action in the District Court to condemn State lands for a public use. *Hollister v. State* (1903) 9 Ida. 8; 71 Pac. 541.

Right of Way for Riparian Proprietors.

Sec. 3303. All persons, companies and corporations, owning or having the possessory title or right to lands adjacent to any stream, have the right to place in the channel or upon the banks or margin of the same, dams or other machines for the purpose of raising the

waters thereof to a level above the banks, requisite for the flow thereof to and upon such adjacent lands; and the right of way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in the following section.

Historical: Rev. St. 1887 Sec. 3184, 11 Ter. Ses. (1881) 271. "The following section" inserted for "the last two

sections." Those sections were superseded by the following section.

Right of Eminent Domain.

Sec. 3304. In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to allow passage thereof, the person or persons desiring the right of way may proceed as in the law of eminent domain.

Historical: Laws 1899, 380, Sec. 14.

Cross Reference: Law of eminent domain: Secs. 5210-5229.

Right to Cross Ditches.

Sec. 3305. Any person, company, or corporation, owners of any ditch, flume or other conduit, cannot lawfully deny to any other person, company or corporation the right to cross their right of way with another ditch, flume or conduit either upon a higher or lower level, where the same can be done in a convenient and safe manner: *Provided*, That such second person, company or corporation shall be liable for all damages that may accrue from the construction of such ditch, flume, or other conduit across the conduit of another.

Historical: Laws 1899, 380, Sec. 10. last half of section. The first portion applied only to appropriations made prior to the law of 1899, and that law, in so far as it relates to the subject of appropriation, is repealed by the law of 1903, 223. The portion of the section retained is generalized, so as to

apply to "any person, company or corporation" and all ditches, whereas it referred strictly to "such" persons and ditches, i. e. ditches existing prior to the 1899 law. It did not seem feasible to preserve the section in its literal, restrictive form, and the principle is thought applicable to all ditches.

CHAPTER 7.

MAINTENANCE AND REPAIR OF DITCHES.

Section

- 3306. Ditches to be kept full.
- 3307. Maintenance of ditch.
- 3308. Maintenance of embankments.
- 3309. Prevention of damage to others.

Section

- 3310. Bridges over ditches.
- 3311. Repair of community ditches.
- 3311a. Change of lateral ditch.

Ditches to Be Kept Full.

Sec. 3306. Every person, company or corporation owning or controlling any ditch, canal or conduit for the purpose of irrigation shall, during the time from April first to the first day of November of each year, keep a flow of water therein, sufficient to the requirements of such persons as are properly entitled to the use of water therefrom: *Provided, however*, That when the public streams or other natural water sources from which the water is obtained is too low and inadequate for that purpose, then such ditch, canal or conduit shall be kept with as full a flow of water therein as may be practic-

able, subject, however, to the rights of priority from the streams or other natural sources as provided by law.

Historical: Laws 1899, 380, Sec. 15.

Maintenance of Ditch.

Sec. 3307. The owners or persons in control of any ditch, canal or conduit used for irrigating purposes, shall maintain the same in good order and repair, ready to deliver water by the first of April in each year, and shall construct the necessary outlets in the banks of the ditches, canals or conduits for a proper delivery of water to persons having rights to the use of the water.

Historical: Laws 1899, 380, Sec. 16.

Maintenance of Embankments.

Sec. 3308. The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water.

Historical: Laws 1899, 380, Sec. 22.

Cross Reference: Penalty for wasting water: Sec. 7144.

Prevention of Damage to Others.

Sec. 3309. The owners or constructors of ditches, canals, works, or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes, or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others.

Historical: Rev. St. 1887, Sec. 3186.
11 Ter. Ses. (1881) 271.

Bridges Over Ditches.

Sec. 3310. All owners of any ditch, canal, or conduit, or any other means for conveying water, shall build substantial bridges not less than sixteen feet wide, and with boards not less than two inches in thickness (unless the same shall be on a county or State road, when such boards shall not be less than three inches thick), at all places where any county or State road crosses the same, or any road kept open and used by any neighborhood of people for their benefit and convenience. In case of neglect or refusal of such owners to build such bridges as above required, after a notice of ten days being given by the said board of county commissioners of the proper county, said board shall proceed to the construction of the same, and shall collect the cost thereof together with the costs of suit: *Provided*, That after

said bridge shall have been constructed across any county or State road in accordance with the provisions of this section, it shall thereafter be maintained at the public expense.

Historical: Laws 1899, 380, Sec. 25.

Repair of Community Ditches.

Sec. 3311. Where a ditch is common property, or there is a common right to the use of the water of a ditch without payment therefor, and any labor or materials are necessary for the repair or cleaning of the ditch, or any gate or flume thereon or thereunto belonging, the water master of the district may make a fair pro rata assessment of labor or materials against the inhabitants of the district claiming the use of such water, according to the benefits received by each; and if any person so assessed neglects or refuses, for the period of three days after notice so to do from the water master or his deputy, to furnish his just proportion of the necessary labor or materials, according to such assessment, he must pay his pro rata in cash to be recovered, with costs, in an action by the water master in his own name.

Historical: Rev. St. 1887, Sec. 3203.
11 Ter. Ses. (1881) 275.

Remedy of Water Company: This section is not repealed by Laws 1899, 380, and a water company which delivers water to a consumer without obtaining prepayment of the charges

therefor, cannot shut off the consumer's water because of his refusal to pay such charges, but may maintain an action to recover the amount of the charges. *Shelby v. Farmers' etc. Ditch Co.* (1905) 10 Ida. 723; 80 Pac. 222.

Change of Lateral Ditch.

Sec. 3311a. Where any lateral ditch has heretofore been, or may hereafter be, constructed across the lands of another, the person or persons owning or controlling the said land, shall have the right at their own expense to change said lateral ditch to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such lateral ditch.

Historical: Laws 1907, 237, Sec. 4.
This section is also found in the Penal Code, Sec. 7147.

TITLE 10

CONTRACTS AND OBLIGATIONS

Chapter

1. General provisions.
2. Sales.

Chapter

3. Sales of goods in bulk.

Note: Statute of frauds: Secs. 6009-6011.

CHAPTER 1.

GENERAL PROVISIONS.

Section

3312. Who may contract.
3313. Enforcement by beneficiary.
3314. Presumption of consideration.
3315. Want of consideration: Burden of proof.
3316. Contracts may be oral.
3317. Contract not put in writing through fraud.
3318. Corporate or official seal: How affixed.

Section

3319. Distinction as to sealed instruments abolished.
3320. Construction of conflicting provisions.
3321. Limitations on right to sue.
3322. Debtor may demand receipt.
3323. Objection to offer of performance.

Who May Contract.

Sec. 3312. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Historical: Rev. St. 1887, Sec. 3220. See 1 Ter. Ses. (1864) 515, Sec. 1.

California Legislation: Same: Civ. Code 1872, Sec. 1556; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Disaffirmance of contract by minor: Secs. 2603-2605. Contracts of insane persons: Secs. 2606-2608.

Right to Contract: A married woman is not "deprived of her civil

liberty" within the meaning of this section, so as to render her incapable of contracting. *Bassett v. Beam* (1894) 4 Ida. 106; 36 Pac. 501. This section does not confer upon married women the right to make any and all contracts that may be made by a feme sole. *Dernham & Kaufmann v. Rowle* (1896) 4 Ida. 753; 44 Pac. 643.

Enforcement by Beneficiary.

Sec. 3313. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Historical: Rev. St. 1887, Sec. 3221.
California Legislation: Same: Civ.

Code 1872, Sec. 1559; Deering's Code, ib.; Kerr's Code, ib.

Presumption of Consideration.

Sec. 3314. A written instrument is presumptive evidence of a consideration.

Historical: Rev. St. 1887, Sec. 3222.
California Legislation: Same: Civ.

Code 1872, Sec. 1614; Deering's Code, ib.; Kerr's Code, ib.

Want of Consideration: Burden of Proof.

Sec. 3315. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

Historical: Rev. St. 1887, Sec. 3223.
California Legislation: Same: Civ.

Code 1872, Sec. 1615; Deering's Code, ib.; Kerr's Code, ib.

Contracts May Be Oral.

Sec. 3316. All contracts may be oral, except such as are specially required by statute to be in writing.

Historical: Rev. St. 1887, Sec. 3224.
California Legislation: Same: Civ.
Code 1872, Sec. 1622; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Contracts required to be in writing: Secs. 6009-6011.

Contract Not Put in Writing Through Fraud.

Sec. 3317. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

Historical: Rev. St. 1887, Sec. 3225.
California Legislation: Same: Civ.
Code 1872, Sec. 1623; Deering's Code, ib.; Kerr's Code, ib.

Estoppel: Where defendant led plaintiff to believe that he had signed a written contract for an interest in certain mining claims, and induced plaintiff to purchase claims on which

he had options, and to otherwise expend money and time to carry out the provisions of the agreement, defendant cannot assert in an action to enforce the contract, that the contract is void under the statute of frauds because he did not in fact sign the same. *Ferguson v. Blood* (1907) 152 Fed. Rep. 98.

Corporate or Official Seal: How Affixed.

Sec. 3318. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

Historical: Rev. St. 1887, Sec. 3226.
California Legislation: Same: Civ.

Code 1872, Sec. 1628; Deering's Code, ib.; Kerr's Code, ib.

Distinction as to Sealed Instruments Abolished.

Sec. 3319. All distinctions between sealed and unsealed instruments are abolished.

Historical: Rev. St. 1887, Sec. 3227.
California Legislation: Same: Civ.

Code 1872, Sec. 1629; Deering's Code, ib.; Kerr's Code, ib.

Construction of Conflicting Provisions.

Sec. 3320. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form, and if the two are absolutely repugnant, the latter must be so far disregarded.

Historical: Rev. St. 1887, Sec. 3228.	Code 1872, Sec. 1651; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Limitations on Right to Sue.

Sec. 3321. Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Historical: Rev. St. 1887, Sec. 3229.	stipulation in a building contract to
California Legislation: Same except	submit differences to arbitrators
"legal" inserted after "usual", line 3:	whose decision shall be final, is void.
Civ. Code 1872, Sec. 1672; repealed	Huber v. St. Joseph's Hospital (1905)
1874.	11 Ida. 631; 83 Pac. 768.

Stipulation for Arbitration: A

Debtor May Demand Receipt.

Sec. 3322. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Historical: Rev. St. 1887, Sec. 3230.	Code 1872, Sec. 1499; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Objection to Offer of Performance.

Sec. 3323. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time of the person making the offer, and which could be then obviated by him, are waived by the creditor if not then stated.

Historical: Rev. St. 1887, Sec. 3231.	Code 1872, Sec. 1501; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

CHAPTER 2.
SALES.

Section	Section
3324. Implied warranty of title.	3328. Notice of election under option.
3325. Warranty in sale by sample.	3329. Delivery: Where to be made.
3326. Warranty of quality and quantity.	3330. Expense of transportation.
3327. Warranty of provisions.	3331. Seller as depositary.

Implied Warranty of Title.

Sec. 3324. One who sells or agrees to sell personal property as his own, thereby warrants that he has a good and unincumbered title thereto.

Historical: Rev. St. 1887, Sec. 3245.	Code 1872, Sec. 1765; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Warranty in Sale by Sample.

Sec. 3325. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

Historical: Rev. St. 1887, Sec. 3246.	Code 1872, Sec. 1766; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Warranty of Quality and Quantity.

Sec. 3326. One who sells any article to which there is affixed or

attached a statement or mark to express the quantity or quality thereof, thereby warrants the truth thereof.

Historical: Rev. St. 1887, Sec. 3247.
California Legislation: Similar: Civ.

Code 1872, Sec. 1773; Deering's Code, ib.; Kerr's Code, ib.

Warranty of Provisions.

Sec. 3327. One who makes a business of selling provisions for domestic use, warrants by a sale thereof to one who buys for actual consumption, that they are sound and wholesome.

Historical: Rev. St. 1887, Sec. 3248.
California Legislation: Same: Civ.

Code 1872, Sec. 1775; Deering's Code, ib.; Kerr's Code, ib.

Notice of Election Under Option.

Sec. 3328. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

Historical: Rev. St. 1887, Sec. 3249.
California Legislation: Same: Civ.

Code 1872, Sec. 1756; Deering's Code, ib.; Kerr's Code, ib.

Delivery: Where to Be Made.

Sec. 3329. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence it is deliverable at the place where it is produced.

Historical: Rev. St. 1887, Sec. 3250.
California Legislation: Same: Civ.

Code 1872, Sec. 1754; Deering's Code, ib.; Kerr's Code, ib.

Expense of Transportation.

Sec. 3330. One who sells personal property must bring it to his own door or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Historical: Rev. St. 1887, Sec. 3251.
California Legislation: Same: Civ.

Code 1872, Sec. 1755; Deering's Code, ib.; Kerr's Code, ib.

Seller as Depositary.

Sec. 3331. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property without charge, until the buyer has had a reasonable opportunity to remove it.

Historical: Rev. St. 1887, Sec. 3252.
California Legislation: Same: Civ.
 Code 1872, Sec. 1748; Deering's Code, ib.; Kerr's Code, ib.

the delivery of possession of the buyer, and is responsible for loss occurring subsequent to the sale and prior to the delivery, unless he shows that such loss occurred without his fault. *Strong v. Morgan* (1902) 8 Ida. 269; 67 Pac. 1123.

Duties of Seller: The seller of personal property is bound to keep the same with at least ordinary care until

CHAPTER 3. SALE OF GOODS IN BULK.

Section

3332. Vendor to make statement of indebtedness.

3333. Notice to creditors of vender.

Section

3334. False statement constitutes perjury.

3335. Definition of sale in bulk.

Vendor to Make Statement of Indebtedness.

Sec. 3332. It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares or merchandise in bulk, for cash or credit, to demand and receive from the vendor thereof, and if the vender be a corporation, then from a managing officer or agent thereof, at least five days before the consummation of such bargain or purchase, and at least five days before paying or delivering to the vender any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness therefor, a written statement under oath containing the names and addresses of all the creditors of said vender, together with the amount of indebtedness due or owing, or to become due or owing, by said vender to each of such creditors, and if there be no such creditors a written statement under oath to that effect; and it shall be the duty of such vender to furnish such statement at least five days before any sale or transfer by him of any stock of goods, wares or merchandise in bulk.

Historical: Laws 1903, 11, Sec. 1.
Comparative Legislation: See Wash-

ington: Bal. An. Code (Sup.) Sec. 3102.

Notice to Creditors of Vender.

Sec. 3333. After having received from the vender the written statement under oath mentioned in the preceding section the vendee shall, at least five days before the consummation of such bargain or purchase, and at least five days before paying or delivering to the vender any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness for the same, in good faith notify, or cause to be notified, personally or by wire or by registered letter, each of the creditors of the vender named in said statement, of the proposed purchase by him of such stock of goods, wares or merchandise. Whenever any person shall purchase any stock of goods, wares or merchandise in bulk, or shall pay the purchase price or any part thereof, or execute or deliver to the vender thereof, or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said stock, or any part thereof, without having first demanded and received from his vender the statement under oath as provided in the preceding section, and without having also notified or caused to be notified all of the creditors of the vender named in such statement, as in this section prescribed, such purchase, sale or transfer shall, as to any and all creditors of the vender, be conclusively presumed fraudulent and void.

Historical: Laws 1903, 11, Sec. 2.
Comparative Legislation: See Wash-

ington: Bal. An. Code (Sup.) Sec. 3102.

False Statement Constitutes Perjury.

Sec. 3334. Any vender of a stock of goods, wares or merchandise in bulk, who shall knowingly or wilfully make or deliver, or cause to be made or delivered, any false statement, or any statement of which any material portion is false, or shall fail to include the names of all of his creditors in any such statement as is required in Section 3332, shall be deemed guilty of perjury, and upon conviction thereof shall be punished accordingly.

Historical: Laws 1903, 11, Sec. 3.

Comparative Legislation: See Washington: Bal. An. Code (Sup.) Sec. 3102.

Cross Reference: Penalty for perjury: Sec. 6486.

Definition of Sale in Bulk.

Sec. 3335. Any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of the business or trade of the vendor, or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed or attempted to be sold or conveyed to one or more persons, shall be deemed a sale or transfer in bulk, in contemplation of this chapter: *Provided*, That nothing contained in this chapter shall apply to sales by executors, administrators, receivers or any public officer acting under judicial process.

Historical: Laws 1903, 11, Sec. 4.

Comparative Legislation: See Wash-

ington: Bal. An. Code (Sup.) Sec. 3102.

TITLE 11

PARTNERSHIP

Chapter

1. Special partnership.

Chapter

2. Mining partnership.

CHAPTER 1.

SPECIAL PARTNERSHIP.

Section

3336. How formed.
 3337. General and special partners.
 3338. Certificate of partners.
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 3341. When formed.
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 3343. Affidavit of publication.
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 3345. Authority of general partners.
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Section

3350. Interest and profits.
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 3356. Defective creation not to enlarge liability.
 3357. Special partnership becomes general.
 3358. Admission of new special partners.
 3359. Dissolution of partnership.
 3360. Use of special partner's name.

How Formed.

Sec. 3336. A special partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance.

Historical: Rev. St. 1887, Sec. 3270.
 13 Ter. Ses. (1885) 148, Sec. 1.

Code 1872, Sec. 2477; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

General and Special Partners.

Sec. 3337. A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

Historical: Rev. St. 1887, Sec. 3271.
 13 Ter. Ses. (1885) 148, Sec. 2.

Code 1872, Sec. 2478; Deering's Code, ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Certificate of Partners.

Sec. 3338. Persons desirous of forming a special partnership must severally sign a certificate stating:

First. The name under which the partnership is to be conducted;
 Second. The general nature of the business intended to be transacted;

Third. The names of all the partners, and their residences, specifying which are general and which are special partners;

Fourth. The amount of capital which each special partner has contributed to the common stock;

Fifth. The periods at which such partnership will begin and end.

Historical: Rev. St. 1887, Sec. 3272,
13 Ter. Ses. (1885) 148, Sec. 3.

Code 1872, Sec. 2479; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Same: Acknowledgment and Record.

Sec. 3339. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it is recorded, must be recorded in like manner in the office of the recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

Historical: Rev. St. 1887, Sec. 3273,
13 Ter. Ses. (1885) 148, Sec. 4.

Code 1872, Sec. 2480; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: Similar: Civ.

Affidavit of Partners.

Sec. 3340. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, must be filed in the same office with the original certificate.

Historical: Rev. St. 1887, Sec. 3274,
13 Ter. Ses. (1885) 148, Sec. 5.

inserted after "paid", line 4: Civ.
Code 1872, Sec. 2481; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: Same except
"in lawful money of the United States"

When Formed.

Sec. 3341. No special partnership is formed until the provisions of the last five sections are complied with.

Historical: Rev. St. 1887, Sec. 3275,
13 Ter. Ses. (1885) 148, Sec. 6.

Code 1872, Sec. 2482; Deering's Code,
ib.; Kerr's Code, ib.

California Legislation: Same: Civ.

Publication of Certificate.

Sec. 3342. The certificate mentioned in this chapter or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in this State published nearest thereto. Such publication must be made once a week, for four successive weeks, beginning within one month from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general.

Historical: Rev. St. 1887, Sec. 3276.
13 Ter. Ses. (1885) 148, Sec. 7.

California Legislation: Same except

"week" for "month", line 6: Civ. Code 1872, Sec. 2483; Deering's Code, ib.; Kerr's Code, ib.

Affidavit of Publication.

Sec. 3343. An affidavit of the making of the publication mentioned in the preceding section made by the printer, publisher or chief clerk of the newspaper in which such publication is made, may be filed with the county recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

Historical: Rev. St. 1887, Sec. 3277.
13 Ter. Ses. (1885) 148, Sec. 8.

California Legislation: Same: Civ.

Code 1872, Sec. 2484; Deering's Code, ib.; Kerr's Code, ib.

Renewal of Special Partnership.

Sec. 3344. Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

Historical: Rev. St. 1887, Sec. 3278.
13 Ter. Ses. (1885) 148, Sec. 9.

California Legislation: Same: Civ.

Code 1872, Sec. 2485; Deering's Code, ib.; Kerr's Code, ib.

Authority of General Partners.

Sec. 3345. The general partners only have authority to transact the business of a special partnership.

Historical: Rev. St. 1887, Sec. 3279.
13 Ter. Ses. (1885) 148, Sec. 10.

California Legislation: Same: Civ.

Code 1872, Sec. 2489; Deering's Code, ib.; Kerr's Code, ib.

Authority of Special Partners.

Sec. 3346. A special partner may at all times investigate the partnership affairs, and advise his partners or their agents, as to their management.

Historical: Rev. St. 1887, Sec. 3280.
13 Ter. Ses. (1885) 148, Sec. 11.

California Legislation: Same: Civ.

Code 1872, Sec. 2490; Deering's Code, ib.; Kerr's Code, ib.

Loans by Special Partners.

Sec. 3347. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

Historical: Rev. St. 1887, Sec. 3281.
13 Ter. Ses. (1885) 148, Sec. 12.

California Legislation: Same: Civ.

Code 1872, Sec. 2491; Deering's Code, ib.; Kerr's Code, ib.

General Partners May Sue and Be Sued.

Sec. 3348. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Historical: Rev. St. 1887, Sec. 3282.
13 Ter. Ses. (1885) 148, Sec. 13.

California Legislation: Same: Civ.

Code 1872, Sec. 2492; Deering's Code,
ib.; Kerr's Code, ib.

Withdrawal of Capital.

Sec. 3349. No special partner under any pretense may withdraw any part of the capital invested by him in the partnership, during its continuance.

Historical: Rev. St. 1887, Sec. 3283.
13 Ter. Ses. (1885) 148, Sec. 14.

California Legislation: Same: Civ.

Code 1872, Sec. 2493; Deering's Code,
ib.; Kerr's Code, ib.

Interest and Profits.

Sec. 3350. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Historical: Rev. St. 1887, Sec. 3284.
13 Ter. Ses. (1885) 148, Sec. 15.

California Legislation: Same: Civ.

Code 1872, Sec. 2494; Deering's Code,
ib.; Kerr's Code, ib.

Unauthorized Withdrawal of Capital.

Sec. 3351. If a special partner withdraws capital from the firm contrary to the provisions of this chapter, he thereby becomes a general partner.

Historical: Rev. St. 1887, Sec. 3285.
13 Ter. Ses. (1885) 148, Sec. 16.

California Legislation: Same: Civ.

Code 1872, Sec. 2495; Deering's Code,
ib.; Kerr's Code, ib.

Preferential Transfer Void.

Sec. 3352. Every transfer of the property of a special partnership, or of any partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

Historical: Rev. St. 1887, Sec. 3286.
13 Ter. Ses. (1885) 148, Sec. 17.

California Legislation: Same: Civ.

Code 1872, Sec. 2496; Deering's Code,
ib.; Kerr's Code, ib.

Liability of General Partners.

Sec. 3353. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Historical: Rev. St. 1887, Sec. 3287.
13 Ter. Ses. (1885) 148, Sec. 18.

California Legislation: Same: Civ.

Code 1872, Sec. 2500; Deering's Code,
ib.; Kerr's Code, ib.

Liability of Special Partners.

Sec. 3354. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

First. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit

filed therewith, or the published announcement thereof, he is liable as a general partner to all creditors of the firm;

Second. If he has willfully interfered with the business of the firm, except as permitted in this chapter, he is liable in like manner; or,

Third. If he has willfully joined in or assented to an act contrary to any of the provisions of this chapter, he is liable in like manner.

Historical: Rev. St. 1887, Sec. 3288.
13 Ter. Ses. (1885) 148, Sec. 19.

California Legislation: Same except
"Article 2 of" inserted before "this

chapter", subds. 2 and 3: Civ. Code
1872, Sec. 2501; Deering's Code, ib.;
Kerr's Code, ib.

Same: Liability for Unintentional Act.

Sec. 3355. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice.

Historical: Rev. St. 1887, Sec. 3289.
13 Ter. Ses. (1885) 148, Sec. 20.

California Legislation: Same: Civ.

Code 1872, Sec. 2502; Deering's Code,
ib.; Kerr's Code, ib.

Defective Creation Not to Enlarge Liability.

Sec. 3356. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by this chapter.

Historical: Rev. St. 1887, Sec. 3290.
13 Ter. Ses. (1885) 148, Sec. 21.

California Legislation: Same except
"Article 1 of" inserted before "this

chapter", last words: Civ. Code, 1872,
Sec. 2503; Deering's Code, ib.; Kerr's
Code, ib.

Special Partnership Becomes General.

Sec. 3357. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact duly verified and signed by one or more of the partners is not filed with the county recorder with whom the original certificate of the partnership was filed, and notice thereof published as is provided in this chapter for the publication of the certificate.

Historical: Rev. St. 1887, Sec. 3291.
13 Ter. Ses. (1885) 148, Sec. 22.

California Legislation: Same except
"clerk and" inserted after "county",

line 5, and "Article 1 of" inserted be-
fore "this chapter", line 7: Civ. Code
1872, Sec. 2507; Deering's Code, ib.;
Kerr's Code, ib.

Admission of New Special Partners.

Sec. 3358. New special partners may be admitted into a special partnership upon a certificate stating the names, residences and con-

tributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified, acknowledged, or proved, according to the provisions of this chapter, and filed with the county recorder with whom the original certificate of partnership was filed.

Historical: Rev. St. 1887, Sec. 3292.
13 Ter. Ses. (1885) 148, Sec. 23.

California Legislation: Similar: Civ.

Code 1872, Sec. 2508; Deering's Code, ib.; Kerr's Code, ib.

Dissolution of Partnership.

Sec. 3359. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete until a notice thereof has been filed and recorded in the office of the county recorder, with whom the original certificate was recorded, and published once in each week for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

Historical: Rev. St. 1887, Sec. 3293.
13 Ter. Ses. (1885) 148, Sec. 24.

California Legislation: Same except

"clerk and" inserted after "county",
line 4: Civ. Code 1872, Sec. 2509;
Deering's Code, ib.; Kerr's Code, ib.

Use of Special Partner's Name.

Sec. 3360. The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited."

Historical: Rev. St. 1887, Sec. 3294.
13 Ter. Ses. (1885) 148, Sec. 25.

California Legislation: Same: Civ.

Code 1872, Sec. 2510; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 2. MINING PARTNERSHIP.

Section

- 3361. When mining partnership exists.
- 3362. Express agreement not necessary.
- 3363. Sharing profits and losses.
- 3364. Lien of partners and creditors.
- 3365. Mine partnership property.
- 3366. Sale of interest by partner.
- 3367. Liability of purchaser.

Section

- 3368. Same.
- 3369. Members cannot bind partnership.
- 3370. Majority of shares governs.
- 3371. Partnership contracts may be recorded.
- 3372. Record constructive notice.

When Mining Partnership Exists.

Sec. 3361. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same.

Historical: Rev. St. 1887, Sec. 3300.

California Legislation: Same: Civ.
Code 1872, Sec. 2511; Deering's Code, ib.; Kerr's Code, ib.

Definition: The term, "mining claim", as used herein, includes patented as well as unpatented mining

ground. (Dis. op.) Salisbury v. Lane (1900) 7 Ida. 370; 63 Pac. 383.

Constitution of Mining Partnership: Parties who acquire a mine for the purpose of working it and actually engage in working the same, comprise a mining partnership although they do

not own the same. *Haskins v. Curran* (1895) 4 Ida. 573; 43 Pac. 559. Nor is it necessary that all the co-owners in the claim shall engage in working it,

either together or separately, in order to constitute a mining partnership. *Hawkins v. Spokane Hydraulic Mining Co.* (1891) 3 Ida. 241; 28 Pac. 433.

Express Agreement Not Necessary.

Sec. 3362. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

Historical: Rev. St. 1887, Sec. 3301.

California Legislation: Same: Civ. Code 1872, Sec. 2512; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Hawkins v. Spokane etc. Min. Co.* (1893) 3 Ida. 650; 33 Pac. 40.

Agreement Unnecessary: A mining

partnership exists without any agreement, either expressed or implied, and the relation differs in this from that of tenants in common. *Hawkins v. Spokane Hydraulic Min. Co.* (1891) 3 Ida. 241; 28 Pac. 433.

Sharing Profits and Losses.

Sec. 3363. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine, bears to the whole partnership capital or whole number of shares.

Historical: Rev. St. 1887, Sec. 3302.

California Legislation: Same: Civ. Code 1872, Sec. 2513; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Hawkins v. Spokane Hydraulic Mine Co.* (1891) 3 Ida. 241; 28 Pac. 433; (1893) 3 Ida. 650; 33 Pac. 40.

Lien of Partners and Creditors.

Sec. 3364. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. A lien exists in favor of the creditors notwithstanding there is an agreement among the partners that it must not.

Historical: Rev. St. 1887, Sec. 3303.

California Legislation: Same except "This lien exists" for "A lien exists in favor of the creditors", line 3: Civ.

Code 1872, Sec. 2514, Deering's Code, ib.; Kerr's Code, ib.

Cited: *Hawkins v. Spokane etc. Min. Co.* (1893) 3 Ida. 650; 33 Pac. 40.

Mine Partnership Property.

Sec. 3365. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

Historical: Rev. St. 1887, Sec. 3304.

California Legislation: Same: Civ. Code 1872, Sec. 2515; Deering's Code, ib.; Kerr's Code, ib.

Criticized: *Hawkins v. Spokane etc. Min. Co.* (1893) 3 Ida. 650; 33 Pac. 40.

Partnership Property: The mining ground is partnership property, whether purchased with partnership or individual funds. *Hawkins v. Spokane Hydraulic Min. Co.* (1891) 3 Ida. 241; 28 Pac. 433.

Sale of Interest by Partner.

Sec. 3366. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

Historical: Rev. St. 1887, Sec. 3305.

California Legislation: Same: Civ. Code 1872, Sec. 2516; Deering's Code, ib.; Kerr's Code, ib.

Cited: Hawkins v. Spokane etc. Min. Co. (1893) 3 Ida. 650; 33 Pac. 40.

Liability of Purchaser.

Sec. 3367. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership unless he purchased in good faith, for a valuable consideration, without notice of such lien.

Historical: Rev. St. 1887, Sec. 3306.

California Legislation: Same: Civ. Code 1872, Sec. 2517; Deering's Code, ib.; Kerr's Code, ib.

Cited: Hawkins v. Spokane etc. Min. Co. (1893) 3 Ida. 650; 33 Pac. 40.

Same.

Sec. 3368. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

Historical: Rev. St. 1887, Sec. 3307.

California Legislation: Same: Civ. Code 1872, Sec. 2518; Deering's Code, ib.; Kerr's Code, ib.

Cited: Hawkins v. Spokane etc. Min. Co. (1893) 3 Ida. 650; 33 Pac. 40.

Members Cannot Bind Partnership.

Sec. 3369. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership except by express authority derived from the members thereof.

Historical: Rev. St. 1887, Sec. 3308.

California Legislation: Same: Civ. Code 1872, Sec. 2519; Deering's Code, ib.; Kerr's Code, ib.

Cited: Hawkins v. Spokane etc. Min. Co. (1893) 3 Ida. 650; 33 Pac. 40.

Majority of Shares Govern.

Sec. 3370. The decision of the members owning a majority of the shares or interests in a mining partnership, binds it in the conduct of its business.

Historical: Rev. St. 1887, Sec. 3309.

California Legislation: Same: Civ. Code 1872, Sec. 2520; Deering's Code, ib.; Kerr's Code, ib.

Cited: Hawkins v. Spokane Hydraulic Min. Co. (1891) 3 Ida. 241; 28 Pac. 433. The minority owner has the right to inspect the property to ascertain its value and the methods in use for working the same, so far as may be necessary for the protection of his interest and to enable him to dispose of the same, but he cannot work it against the protest of the majority owners. Hawkins v. Spokane etc. Min. Co. (1893) 3 Ida. 650; 33 Pac. 40.

Rights of Majority: Those owning a majority of the shares or interests in a mining partnership have the right to control its methods of working; therefore, a majority owner of the shares in a mining partnership is entitled to an injunction to restrain other partners from working a claim except in the manner directed by him. Haw-

Partnership Contracts May Be Recorded.

Sec. 3371. Written contracts relating to prospecting or mining, or to the formation of co-partnership for that purpose, when signed by the parties thereto and indorsed by at least one witness, may be recorded in the office of the county recorder of the county wherein

it is proposed to prosecute the business of said co-partnership, or where the property affected by such contract is situated.

Historical: Laws 1899, 366, Sec. 1.

Record Constructive Notice.

Sec. 3372. Such record shall be constructive notice to all persons of the matters contained in such contract or co-partnership agreement.

Historical: Laws 1899, 366, Sec. 2.

TITLE 12

LIENS

Chapter

1. Liens in general.
2. Mortgages in general.
3. Mortgage of real property.
4. Mortgage of personal property.

Chapter

5. Pledge.
6. Miscellaneous liens.
7. Liens for service of sires.

CHAPTER 1.

LIENS IN GENERAL.

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3374. General and special liens.
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3383. Personal obligation not implied.
3384. Priority of purchase money mortgage.
3385. Right to redeem from lien.
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3387. Restoration extinguishes lien.

Liens Defined.

Sec. 3373. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

Historical: Rev. St. 1887, Sec. 3225.

California Legislation: Similar: Civ. Code 1872, Sec. 2872; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Transfer in Trust: The transfer in trust mentioned by this section, is

one which creates a trust and absolutely conveys title from the grantor, and not a deed of trust which hypothecates the property for the payment of the debt. *Brown v. Bryan* (1898) 6 Ida. 1; 51 Pac. 995.

General and Special Liens.

Sec. 3374. Liens are either general or special.

Historical: Rev. St. 1887, Sec. 3326.

California Legislation: Same: Civ.

Code 1872, Sec. 2873; Deering's Code, ib.; Kerr's Code, ib.

General Lien Defined.

Sec. 3375. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

Historical: Rev. St. 1887, Sec. 3327.

California Legislation: Same: Civ. Code 1872, Sec. 2874; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Brown v. Bryan* (1898) 6 Ida. 1; 51 Pac. 995.

Special Lien Defined.

Sec. 3376. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Historical: Rev. St. 1887, Sec. 3328.

California Legislation: Same: Civ. Code 1872, Sec. 2875; Deering's Code, ib.; Kerr's Code, ib.

Cited: Brown v. Bryan (1898) 6 Ida. 1; 51 Pac. 995.

Satisfaction of Prior Lien.

Sec. 3377. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Historical: Rev. St. 1887, Sec. 3329.

California Legislation: Same: Civ. Code 1872, Sec. 2876; Deering's Code, ib.; Kerr's Code, ib.

Cited: Law v. Spence (1897) 5 Ida. 244; 48 Pac. 282.

Contracts Subject to This Chapter.

Sec. 3378. Contracts of mortgage and pledge are subject to all the provisions of this chapter.

Historical: Rev. St. 1887, Sec. 3330.

California Legislation: Similar: Civ.

Code 1872, Sec. 2877; Deering's Code, ib.; Kerr's Code, ib.

Lien on Future Interest.

Sec. 3379. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of said interest.

Historical: Rev. St. 1878, Sec. 3331.

California Legislation: Same: Civ.

Code 1872, Sec. 2883; Deering's Code, ib.; Kerr's Code, ib.

Lien for Performance of Future Obligation.

Sec. 3380. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

Historical: Rev. St. 1887, Sec. 3332.

California Legislation: Same: Civ.

Code 1872, Sec. 2884; Deering's Code, ib.; Kerr's Code, ib.

Lien Transfers No Title.

Sec. 3381. Notwithstanding an agreement to the contrary a lien, or a contract for a lien, transfers no title to the property subject to the lien.

Historical: Rev. St. 1887, Sec. 3333.

California Legislation: Same: Civ. Code 1872, Sec. 2888; Deering's Code, ib.; Kerr's Code, ib.

Cited: Brown v. Bryan (1898) 6 Ida. 1; 51 Pac. 995.

Title Not Transferred: A provision

in a contract for the lease of sheep, whereby a lien is given on all increase to secure the payment of the rental therefor, conveys no title to such increase. Solomon v. Franklin (1900) 7 Ida. 316; 62 Pac. 1030.

Contracts for Forfeiture Void.

Sec. 3382. All contracts for the forfeiture of property subject to

a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

Historical: Rev. St. 1887, Sec. 3334.

California Legislation: Same: Civ. Code 1872, Sec. 2889; Deering's Code, ib.; Kerr's Code, ib.

Cited: Brown v. Bryan (1898) 6 Ida. 1; 51 Pac. 995.

Forfeitures Void: A provision in a

contract for the lease of sheep declaring a forfeiture of all interests of the lessor in the sheep, wool, product, and increase thereof, in case of default in the payment of the rental thereof, is void. Solomon v. Franklin (1900) 7 Ida. 316; 62 Pac. 1030.

Personal Obligation Not Implied.

Sec. 3383. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Historical: Rev. St. 1887, Sec. 3335.

California Legislation: Same: Civ.

Code 1872, Sec. 2890; Deering's Code, ib.; Kerr's Code, ib.

Priority of Purchase Money Mortgage.

Sec. 3384. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

Historical: Rev. St. 1887, Sec. 3336.

California Legislation: Same: Civ. Code 1872, Sec. 2898; Deering's Code, ib.; Kerr's Code, ib.

Purchase Money Mortgage: A mortgage on pre-empted public land made to procure money to make final payment for the land, is a purchase money

mortgage within the meaning of this section, and has priority over subsequent accruing marital rights of the mortgagor's wife in the land, although she did not join in the mortgage. Kneen v. Halin (1899) 6 Ida. 621; 59 Pac. 14.

Right to Redeem From Lien.

Sec. 3385. Every person having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Historical: Rev. St. 1887, Sec. 3337.

California Legislation: Same: Civ. Code 1872, Sec. 2903; Deering's Code,

ib.; with additional provisions as amended: Kerr's Code, ib.

Rights of Junior Lienor.

Sec. 3386. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

Historical: Rev. St. 1887, Sec. 3338.

California Legislation: Same: Civ.

Code 1872, Sec. 2904; Deering's Code, ib.; Kerr's Code, ib.

Restoration Extinguishes Lien.

Sec. 3387. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith and for a good consideration.

Historical: Rev. St. 1887, Sec. 3339.
California Legislation: Same with additional provision but "subsequently" line 5, omitted: Civ. Code 1872,

Sec. 2913; same as amended: Deering's Code, ib.; similar as further amended: Kerr's Code, ib.

CHAPTER 2.
MORTGAGES IN GENERAL.

Section

- 3388. Mortgage defined.
- 3389. Must be in writing.
- 3390. Lien of mortgage is special.
- 3391. Transfers deemed mortgages.
- 3392. Defeasance may be shown by parol.
- 3393. Extent of mortgage lien.
- 3394. Subsequent title inures to mortgagee.
- 3395. Power of attorney to mortgage.
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Section

- 3397. Same: Not notice to mortgagor.
- 3398. Assignment of debt carries security.
- 3399. Marginal discharge of mortgage.
- 3400. Discharge of mortgage on certificate.
- 3401. Record of discharge.
- 3402. Refusal to satisfy mortgage: Penalty.

Note: Foreclosure of mortgages: Secs. 4520-4523.

Mortgage Defined.

Sec. 3388. Mortgage is a contract by which specific property is hypothecated for the performance of an act without the necessity of a change of possession.

Historical: Rev. St. 1887, Sec. 3350.
California Legislation: Same: Civ. Code 1872, Sec. 2920; Deering's Code, ib.; Kerr's Code, ib.
Trust Deed a Mortgage: A trust deed

given to secure a debt is a mortgage although it contains a power of sale. *Brown v. Bryan* (1898) 6 Ida. 1; 51 Pac. 995.

Must Be in Writing.

Sec. 3389. A mortgage can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant or conveyance of real property.

Historical: Rev. St. 1887, Sec. 3351.
California Legislation: Same except "or conveyance" omitted: Civ. Code 1872, Sec. 2922; Deering's Code, ib.; Kerr's Code, ib.

Application: This section applies to all mortgages whether real or chattel. *Willows v. Rosenstein* (1897) 5 Ida. 305; 48 Pac. 1067.

Prohibited Agreements: An agreement to hold a mortgage for an individual indebtedness when said mortgage has been included in a subsequent co-partnership mortgage which has been satisfied, is contrary to the provisions of this section. *Ib.*

The lien of a mortgage cannot be extended beyond its terms so as to secure a debt not named therein, or to hypothecate property not covered by the mortgage, except by a compliance with the provisions of this section; but this does not preclude the mortgagor from waiving the statute of limitations as to the mortgage debt by indorsing an acknowledgment to pay

the debt on the note and mortgage. *Moulton v. Williams* (1899) 6 Ida. 424; 55 Pac. 1019.

Parties to an usurious contract secured by a trust deed, cannot remove the usurious character of the transaction by an agreement between themselves, and thus make the trust deed a lien for interest and costs as against a junior mortgagee, who is not a party to the agreement and whose rights will be prejudiced thereby. *Madsen v. Whitman* (1902) 8 Ida. 762; 71 Pac. 152.

Estoppel: Where a stranger to a mortgage purchases the mortgaged property, and agrees that the mortgage shall stand as security for the purchase price, the provisions of this section have no application, and the purchaser is estopped to deny the validity of the agreement although it is not executed in conformity to this section. *Burke Land etc. Co. v. Wells, Fargo Co.* (1900) 7 Ida. 42; 60 Pac. 87.

Lien of Mortgage Is Special.

Sec. 3390. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

Historical: Rev. St. 1887, Sec. 3352.
California Legislation: Same: Civ.

Code 1872, Sec. 2923; Deering's Code, ib.; Kerr's Code, ib.

Transfers Deemed Mortgages.

Sec. 3391. Every transfer of an interest in property other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by an actual change of possession, in which case it is to be deemed a pledge.

Historical: Rev. St. 1887, Sec. 3353.

California Legislation: Same except "other than in trust" omitted: Civ. Code 1872, Sec. 2924; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Definition: The transfer in trust mentioned by this section is one which creates a trust and absolutely conveys title from the grantor, and not a deed of trust which hypothecates the property for the payment of the debt. *Brown v. Bryan* (1898) 6 Ida. 1; 51 Pac. 995.

What Constitutes a Mortgage: A deed absolute on its face and a separate agreement bearing the same date as the deed, for a re-conveyance of the same tract of land to the grantor upon payment of the consideration named in the deed, by a specified time, constitute together a mortgage. *Kelley v. Leachman* (1892) 3 Ida. 392; 29 Pac. 849; (1893) 3 Ida. 629; 33 Pac. 44; *Wilson v. Thompson* (1896) 4 Ida. 679; 43 Pac. 557.

Defeasance May Be Shown by Parol.

Sec. 3392. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

Historical: Rev. St. 1887, Sec. 3354.

California Legislation: Same: Civ. Code 1872, Sec. 2925; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Brown v. Bryan* (1898) 6 Ida. 1; 51 Pac. 995.

Extent of Mortgage Lien.

Sec. 3393. A mortgage is a lien upon everything that would pass by a grant or conveyance of the property.

Historical: Rev. St. 1887, Sec. 3355.

California Legislation: Same except "or conveyance" omitted: Civ. Code 1872, Sec. 2926; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Kelley v. Leachman* (1893) 3 Ida. 629; 33 Pac. 44.

Subsequent Title Inures to Mortgagee.

Sec. 3394. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

Historical: Rev. St. 1887, Sec. 3356.

California Legislation: Same with additional sentence: Civ. Code 1872,

Sec. 2930; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Power of Attorney to Mortgage.

Sec. 3395. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified and recorded in like manner as powers of attorney for grants of real property.

Historical: Rev. St. 1887, Sec. 3357.
California Legislation: Same: Civ.

Code 1872, Sec. 2933; Deering's Code, ib.; Kerr's Code, ib.

Recording Assignment of Mortgage.

Sec. 3396. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Historical: Rev. St. 1887, Sec. 3358.

California Legislation: Same except "but in a separate book" inserted af-

ter "mortgage", line 2: Civ. Code 1872, Sec. 2934; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Same: Not Notice to Mortgagor.

Sec. 3397. The record of the assignment of a mortgage is not of itself notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Historical: Rev. St. 1887, Sec. 3359.

California Legislation: Same: Civ. Code 1872, Sec. 2935; similar as

amended: Deering's Code, ib.; Kerr's Code, ib.

Assignment of Debt Carries Security.

Sec. 3398. The assignment of a debt secured by mortgage carries with it the security.

Historical: Rev. St. 1887, Sec. 3360.

California Legislation: Same: Civ.

Code 1872, Sec. 2936; Deering's Code, ib.; Kerr's Code, ib.

Marginal Discharge of Mortgage.

Sec. 3399. A recorded mortgage or chattel mortgage filed as provided by law, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows:

"Signed and acknowledged before me this..... day of in the year of"

"A. B., Recorder."

Historical: Rev. St. 1887, Sec. 3361. (See 1 Ter. Ses. (1864) 528. Sec. 36); amended Laws 1895, 54, Sec. 1; re-enacted Laws 1899, 249, Sec. 1.

California Legislation: Same except "or chattel mortgage filed as provided by law", line 1, omitted: Civ. Code 1872, Sec. 2938; Deering's Code, ib.; Kerr's Code, ib.

Discharge of Lien: The lien of a mortgage which is not discharged by marginal entry, as provided by this section, or on certificate, as provided in the following section, or by decree of court, remains in force. *Kelley v. Leachman* (1893) 3 Ida. 629; 33 Pac. 44.

Discharge of Mortgage on Certificate.

Sec. 3400. A recorded mortgage or chattel mortgage filed as provided by law, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody

thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representative or assigns, acknowledged or proved and certified as prescribed by the chapter on "Recording Transfers," stating that the mortgage has been paid, satisfied or discharged.

Historical: Rev. St. 1887, Sec. 3362. (1 Ter. Ses. (1864) 528, Sec. 37); amended Laws 1895, 54, Sec. 2; re-enacted Laws 1899, 249 Sec. 2.

California Legislation: Similar: Civ. Code 1872, Sec. 2939; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Recording transfers: Secs. 3149-3163.

Cited: Kelley v. Leachman (1893) 3 Ida. 629; 33 Pac. 44.

Record of Discharge.

Sec. 3401. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record book to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

Historical: Rev. St. 1887, Sec. 3363. See 1 Ter. Ses. (1864) 528, Sec. 38.

California Legislation: Same: Civ.

Code 1872, Sec. 2940; Deering's Code, ib.; Kerr's Code, ib.

Refusal to Satisfy Mortgage: Penalty.

Sec. 3402. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof so as to entitle it to be recorded, or he must enter satisfaction or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor, the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.

Historical: Rev. St. 1887, Sec. 3364. 1 Ter. Ses. (1864) 528, Sec. 39.

California Legislation: Similar: Civ. Code 1872, Sec. 2941; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Cited: Stevens v. Home Savings etc. Assn. (1897) 5 Ida. 741; 51 Pac. 779, 986; Barnes v. Buffalo Pitts Co. (1899) 6 Ida. 519; 57 Pac. 267; Portneuf Lodge v. Western etc. Savings Co. (1899) 6 Ida. 673; 59 Pac. 362.

Usurious Mortgages — Satisfaction: A mortgage given to secure the payment of an usurious contract is satisfied upon the payment of the principal debt, whereupon the mortgagor is entitled to a satisfaction of such mortgage of record, and an action for such relief will lie under this section. Cleveland v. Western Loan & Savings

Co. (1901) 7 Ida. 477; 63 Pac. 885; Anderson v. Or. Mtg. Co. (1902) 8 Ida. 418; 69 Pac. 130.

Accrual of Action: The cause of action given by this section does not accrue until the mortgage debt has been fully paid and demand for a discharge of the mortgage has been made. Barnes v. Pitts Agri. Works (1898) 6 Ida. 259; 55 Pac. 237.

Pleading: A complaint to recover the penalty prescribed by this section must contain a direct and unequivocal allegation of payment of the amount secured by the mortgage; an allegation that plaintiff has "fully paid and satisfied the notes and mortgage in so far as the holder of said notes and mortgage is concerned" is insufficient. Gamble v. Canadian etc. Trust Co. (1898) 6 Ida. 202; 55 Pac. 241.

CHAPTER 3. MORTGAGE OF REAL PROPERTY.

Section

3403. What may be mortgaged.
3404. Independent defeasance to be recorded.

Section

3405. To be acknowledged and recorded as conveyances.

What May Be Mortgaged.

Sec. 3403. Any interest in real property which is capable of being transferred may be mortgaged.

Historical: Rev. St. 1887, Sec. 3375.
California Legislation: Same: Civ.

Code 1872, Sec. 2947; Deering's Code, ib.; Kerr's Code, ib.

Independent Defeasance to Be Recorded.

Sec. 3404. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasable on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, is recorded in the office of the county recorder of the county where the property is situated.

Historical: Rev. St. 1887, Sec. 3376.
California Legislation: Same except "shall have been recorded" for "is re-

corded", line 6; Civ. Code 1872, Sec. 2950; Deering's Code, ib.; Kerr's Code, ib.

To Be Acknowledged and Recorded as Conveyances.

Sec. 3405. Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants and conveyances thereof.

Historical: Rev. St. 1887, Sec. 3377.
California Legislation: Same except "and conveyances" omitted and addi-

tional clause: Civ. Code 1872, Sec. 2952; as amended: Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 4. MORTGAGE OF PERSONAL PROPERTY.

Section

3406. Property subject to mortgage.
3407. Mortgage on exempt property.
3408. Affidavit and record of mortgage.
3409. Filing and indexing of mortgage.
3410. Removal from county.
3411. Attachment of mortgaged property.
3412. Modes of foreclosure.
3413. Foreclosure by notice and sale: Affidavit.

Section

3414. Service of affidavit.
3415. Notice of sale.
3416. Title of purchaser: Bill of sale.
3417. Return of sale.
3418. Contest of foreclosure.
3419. Unauthorized removal or sale of property.
3420. Time allowed to record mortgage.

Property Subject to Mortgage.

Sec. 3406. Chattel mortgages may be made upon all property, goods or chattels, not defined by statute to be real estate, upon growing crops, and upon crops to be sown and grown in the future; but, should the persons executing mortgages upon crops to be afterwards

sown, fail to sow or cause the same to be sown, no lien of such mortgages shall attach to crops sown by other persons upon the lands described in said mortgages, except in so far as the mortgagors in said mortgages have or retain interests in said crops.

Historical: Rev. St. 1887, Sec. 3385. (See 13 Ter. Ses. (1885) 74, Sec. 1); amended Laws 1897, 7, Sec. 1; re-enacted Laws 1899, 292, Sec. 1.

California Legislation: Different: Civ. Code 1872, Sec. 2955; as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

What May Be Mortgaged: A valid chattel mortgage cannot be given on property other than that prescribed in this section, and an attempted chattel mortgage on a building affixed to land creates no lien thereon. *Beeler v. C. C. Merc. Co.* (1902) 8 Ida. 644; 70 Pac. 943.

Mortgage on Exempt Property.

Sec. 3407. No personal property of either husband or wife, that is exempt by law from execution, shall be mortgaged by either husband or wife without the joint concurrence of both.

Historical: Laws 1899, 292, Sec. 1.

Cited: *Vollmer v. Estate of James W. Reid* (1904) 10 Ida. 196; 77 Pac. 325.

Mortgage on Exempt Property: A

chattel mortgage executed by the husband alone upon exempt property, creates no lien on such property. *Kindall v. Lincoln Hdw. & Imp. Co.* (1902) 8 Ida. 664; 70 Pac. 1056.

Affidavit and Record of Mortgage.

Sec. 3408. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless:

First. It is accompanied by the affidavit of the mortgagor that it is made in good faith and without any design to hinder, delay or defraud creditors;

Second. It is acknowledged or proven, as grants of real estate, and the mortgage, or a true copy thereof, is filed for record with the county recorder of the county where such property is located and kept.

Historical: Rev. St. 1887, Sec. 3386; amended Laws 1899, 121, Sec. 1; re-enacting Laws 1890-91, 181, Sec. 1.

California Legislation: Similar: Civ. Code 1872, Sec. 2957; Deering's Code, ib.; Kerr's Code, ib.

Cited: *First Nat. Bank of St. Anthony v. Steers* (1904) 9 Ida. 519; 75 Pac. 225.

Necessity of Affidavit: The affidavit required by this section is necessary only to sustain the validity of the mortgage as against creditors and purchasers, and does not affect it as between mortgagor and mortgagee. *Marchand v. Ronaghan* (1903) 9 Ida. 95; 72 Pac. 731.

Unrecorded Mortgages: Where a chattel mortgage is not filed for record as required by this section, a subsequent purchaser of the property is not bound by the mortgage unless he is shown to have had actual notice of the same. *Cowden v. Finney* (1904) 9 Ida. 619; 75 Pac. 765; *Cowden v.*

Mills (1904) 9 Ida. 626; 75 Pac. 766.

Power of Sale in Mortgagor: While a mortgagor may retain possession of the mortgaged property provided the mortgage is executed and recorded as required by law, yet, if the mortgagee permits the mortgagor not only to retain possession but to sell the property at retail without also requiring the proceeds of sale to be applied in reduction of the debt, the mortgage is void as against attaching creditors of the mortgagor. *Lewiston Nat. Bank v. Martin* (1890) 2 Ida. 784; 23 Pac. 920.

While a mortgage on a stock of goods which permits the mortgagor to remain in the full and free use and enjoyment of the same, is void in that it permits him to sell the goods in the usual course of trade, yet such a mortgage is valid when it covers wood corded and standing in the forest where it has been cut. *Meyer v. Munro* (1903) 9 Ida. 46; 71 Pac. 969.

Filing and Indexing of Mortgage.

Sec. 3409. Upon the receipt of any such instrument the recorder

shall indorse on the back the time of receiving it, and shall file the same in his office, to be kept there for the inspection of all persons interested, and the recorder shall keep a book in which shall be entered a minute of all mortgages of personal property. Such book shall be ruled off into separate columns, with heads as follows: "Time of reception," "Name of mortgagor," "Date of instrument," "Amount secured," "When due," "Property mortgaged," "Before whom sworn to and acknowledged," and "Remarks." The proper entry shall be made under each of such heads, and the recorder shall receive the sum of fifty cents, and no more, for filing any such mortgage, which amount he may demand before filing any such mortgage: *Provided*, That property in transit from the possession of the mortgagee to the county in which the mortgagor resides, or to a location for use, shall, for a reasonable length of time for such transportation, be considered as located in the county to which the same is being removed: *Provided, further*, That if the mortgagee receive and retain actual possession of the property mortgaged, he may omit the filing of his mortgage during the continuance of such actual possession.

Historical: Rev. St. 1887, Sec. 3387; amended Laws 1890-91, 181, Sec. 2; re-enacted Laws 1899, 121, Sec. 2.

Cited: Beeler v. C. C. Merc. Co. (1902) 8 Ida. 644; 70 Pac. 943.

Stipulation for Possession by Mortgagee: This section recognizes the right of a mortgagor to contract with the mortgagee for the possession by the latter of the mortgaged property, and a mortgage is not rendered invalid by reason of a clause authorizing the mortgagee upon named contingencies, to take possession of the

mortgaged property. First Nat. Bank of St. Anthony v. Steers (1904) 9 Ida. 516; 75 Pac. 225.

Same—Action by Mortgagee: Where a chattel mortgage contains a stipulation authorizing the mortgagee to take possession of the property upon certain contingencies therein named, the mortgagee, upon the occurrence of such a contingency, may maintain an action of claim and delivery to recover possession of the property. *Ib.*

Removal From County.

Sec. 3410. When mortgaged personal property is thereafter removed from the county wherein it was situated at the time of the execution of the mortgage by the written consent of the mortgagee, it is, except as between the parties to the mortgage, exempt from the operations thereof, unless, either (1) the mortgagee, within ten days after such removal, cause the mortgage to be recorded in the county to which the property has been removed, or (2) the mortgagee, within ten days after such removal, take possession of the mortgaged property.

Historical: Rev. St. 1887, Sec. 3388. 13 Ter. Ses. (1885) 74, Sec. 4.

California Legislation: Similar but

"thirty" days for "ten" days throughout: Civ. Code 1872, Sec. 2965; Deering's Code, *ib.*; Kerr's Code, *ib.*

Attachment of Mortgaged Property.

Sec. 3411. All mortgaged personal property may be attached at the suit of any creditor of the mortgagor; such creditor, however, must pay or tender to the mortgagee, the amount due him on such mortgage before the officer making such attachment is entitled to the actual possession of such property. When the property thus attached and redeemed by the creditor is sold by the officer under due legal proceedings, he must:

First. Pay to such creditor the amount advanced by him to pay the mortgage with lawful interest thereon;

Second. Pay all costs appertaining to the judgment, execution and sale;

Third. Pay the judgment creditor the amount of his judgment, and the surplus, if any, to the judgment debtor.

If the creditor of the mortgagor prefer he may cause to be attached the equity of redemption to the mortgagor. Such attachment is made by serving upon the mortgagor and the mortgagee a copy of the writ of attachment, together with a notice signed by the officer that the interest of the mortgagor in such property is attached. When the sale of such equity is made on execution obtained by such attaching creditor, the proceeds must be applied to the payment of the costs and the satisfaction of the judgment, and the remainder, if any, paid to the judgment debtor. The purchaser at such sale is entitled to the possession of the property subject, however, to the rights of the mortgagee.

Historical: Rev. St. 1887, Sec. 3389. 13 Ter. Ses. (1885) 74, Sec. 5.

California Legislation: See Civ. Code 1872, Sec. 2968; Deering's Code, ib.; Kerr's Code, ib.

Payment by Creditor — Effect: Where a creditor, in order to subject

the mortgaged property of his debtor to the payment of his claim, pays the amount of the mortgage to the mortgagee, the mortgage is discharged and the creditor cannot thereafter enforce the same. *Baumgartner v. Vollmer* (1897) 5 Ida. 340; 49 Pac. 729.

Modes of Foreclosure.

Sec. 3412. Any mortgage of personal property, when the debt to secure which the mortgage was given is due, may be foreclosed by notice and sale as hereinafter provided, or it may be foreclosed by action in the District Court having jurisdiction in the county in which the property is situated.

Historical: Rev. St. 1887, Sec. 3390. 13 Ter. Ses. (1885) 74, Sec. 6.

California Legislation: See Civ. Code 1872, Sec. 2967; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Foreclosure of mortgages by action: Sec. 4520.

Cited: Blumaur-Frank Drg. Co. v.

Branstetter (1895) 4 Ida. 557; 43 Pac. 575; *Rein v. Callaway* (1901) 7 Ida. 634; 65 Pac. 63; *Beeler v. C. C. Merc. Co.* (1902) 8 Ida. 644; 70 Pac. 943.

Constitutionality: This section is held constitutional. *Givens v. Keeney* (1900) 7 Ida. 335; 63 Pac. 110.

Foreclosure by Notice and Sale: Affidavit.

Sec. 3413. In proceeding to foreclose by notice and sale, the mortgagee, his agent or attorney, must make an affidavit stating the date of the mortgage, the names of the parties thereto, a full description of the property mortgaged, and the amount due thereon. Such affidavit must be placed in the hands of the sheriff of the county or the constable in the precinct where the property is located, together with a notice signed by the mortgagee, his agent or attorney, requiring such officer to take the mortgaged property into his possession and sell the same.

Historical: Rev. St. 1887, Sec. 3391. (See 13 Ter. Ses. (1885) 74, Sec. 7); Laws 1905, 129, Sec. 1.

Remedies Exclusive: The mode of foreclosure prescribed by this section

and the foreclosure by action authorized by Rev. St. Sec. 4520, are the exclusive modes of foreclosure; a power of sale contained in a mortgage is void, and does not authorize the mort-

gagee to foreclose summarily by exercising such power. *Rein v. Callaway* (1901) 7 Ida. 634; 65 Pac. 63.

Sheriff Protected: Where the affidavit and notice are regular in form, the sheriff is bound to execute the

same, and will be protected in such execution without determining whether or not the mortgage on which the affidavit and notice are issued is valid. *Blumauer-Frank Drg. Co. v. Branstetter* (1895) 4 Ida. 557; 43 Pac. 575.

Service of Affidavit.

Sec. 3414. The affidavit must be personally served upon the mortgagor, or other person having possession of the mortgaged property, in the same manner as is provided by law for the service of a summons. At the time of such service of the affidavit, the officer must also serve a notice signed by himself, setting forth a full description of the property, the amount claimed to be due by the mortgagee, and the time and place of sale: *Provided, however,* That if the mortgagor or other person interested, cannot be found within the county wherein the mortgage is being foreclosed, and has no agent therein known to the officer, the general notice of sale directed in the next section is sufficient service upon all parties interested.

Historical: Rev. St. 1887, Sec. 3392. See 13 Ter. Ses. (1885) 74 Sec. 8.

California Legislation: See Civ. Code 1872, Sec. 2967; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Service of summons: Sec. 4144.

Cited: *Blumauer-Frank Drg. Co. v. Branstetter* (1895) 4 Ida. 557; 43 Pac. 575.

Notice of Sale.

Sec. 3415. The officer must take the property into his possession and give notice of sale in the same manner and for the same length of time as is required in cases of the sale of like property on execution and the sale must be conducted in the same manner.

Historical: Rev. St. 1887, Sec. 3393. 13 Ter. Ses. (1885) 74, Sec. 9.

California Legislation: See references of preceding section.

Cross Reference: Sales on execution: Secs. 4482-4489.

Cited: *Blumauer-Frank Drg. Co. v.*

Branstetter (1895) 4 Ida. 557; 43 Pac. 575; (Dis. op.) *First Natl. Bank of Pocatello v. Bunting & Co.* (1900) 7 Ida. 387; 63 Pac. 694; *Beeler v. C. C. Merc. Co.* (1902) 8 Ida. 644; 70 Pac. 943.

Title of Purchaser: Bill of Sale.

Sec. 3416. The purchaser at such sale takes all the interest which the mortgagor had in the mortgaged property at the time of the execution of the mortgage, and the officer selling must execute to him a bill of sale of the property, which must set forth the date of the mortgage, the names of the parties thereto, the date of sale, a description of the property, and the amount paid therefor.

Historical: Rev. St. 1887, Sec. 3394. See 13 Ter. Ses. (1885) 74, Sec. 10.

California Legislation: See Civ. Code 1872, Sec. 2967; Deering's Code, ib.;

Kerr's Code, ib.

Cited: *Blumauer-Frank Drg. Co. v. Branstetter* (1895) 4 Ida. 557; 43 Pac. 575.

Return of Sale.

Sec. 3417. The officer must make return upon the affidavit hereinbefore mentioned of all his proceedings, and must transmit the same, by mail or otherwise, to the clerk of the District Court having jurisdiction in the county in which the sale was made, and the clerk must file such return in his office.

Historical: Rev. St. 1887, Sec. 3395. 13 Ter. Ses. (1885) 74, Sec. 11.

California Legislation: See Civ. Code 1872, Sec. 2967; Deering's Code, ib.; Kerr's Code, ib.

Cited: Blumaur-Frank Drg. Co. v. Branstetter (1895) 4 Ida 557; 43 Pac. 575.

Contest—Production of Affidavit: In an action to contest the right to fore-

close a chattel mortgage, the court is not authorized to order the defendants to file the original affidavit in the mortgage foreclosure proceedings, unless it is made to appear that they have the affidavit in their possession, and fail or refuse to produce the same upon demand. *Murphy v. Russell & Co.* (1901) 8 Ida. 133; 67 Pac. 421.

Contest of Foreclosure.

Sec. 3418. The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested in the District Court by any person interested in so doing, for which purpose an injunction may issue if necessary.

Historical: Rev. St. 1887, Sec. 3396. See 13 Ter. Ses. (1885) 74, Sec. 12.

California Legislation: See Civ. Code 1872, Sec. 2967; Deering's Code, ib.; Kerr's Code, ib.

Cited: *Murphy v. Russell & Co.* (1901) 8 Ida. 133; 67 Pac. 421; (1901) 8 Ida. 151; 67 Pac. 427.

Nature of Action: This section contemplates an action in the District Court and authorizes the issuance of

an injunction, but the action may be maintained without an injunction. *Murphy v. Russell & Co.* (1901) 8 Ida. 133; 67 Pac. 421.

Contest by Creditor: An attaching creditor may contest the validity of the mortgage on which the foreclosure is based. *Blumaur-Frank Drg. Co. v. Branstetter* (1895) 4 Ida. 557; 43 Pac. 575.

Unauthorized Removal or Sale of Property.

Sec. 3419. If the mortgagor of any property mortgaged in pursuance of the provisions of this chapter, while such mortgage remains unsatisfied in whole or in part, wilfully removes from the county or counties where the mortgage is recorded, destroys, conceals, sells, or in any manner disposes of, the property mortgaged, or any part thereof, without consent of the holder of said mortgage, he is guilty of larceny, and such sale or transfer is void.

Historical: Rev. St. 1887, Sec. 3397. See 13 Ter. Ses. (1885) 74, Sec. 13.

California Legislation: See Civ. Code 1872, Sec. 2967; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Similar provision: Sec. 7100.

Cited: *Lewiston Nat. Bank v. Martin* (1890) 2 Ida. 734; 23 Pac. 920.

Oral Consent: Under a territorial

statute which was substantially similar to this section with the exception that it required the "written consent" of the mortgagee to a sale, it was held that oral evidence of the mortgagee's consent was admissible to sustain the sale as between vendee and vendor in the absence of any objection by the mortgagee to the sale. *Mills v. Glennon* (1885) 2 Ida. 105; 6 Pac. 116.

Time Allowed to Record Mortgage.

Sec. 3420. The mortgagee is allowed one day for every twenty miles or fraction thereof of the distance between his residence and the county recorder's office where such mortgage is to be recorded, to conform to the provisions of this chapter, before any subsequent incumbrance, sale or seizure, under any process, is effectual to hold or bind the mortgaged property.

Historical: Rev. St. 1887, Sec. 3398. 13 Ter. Ses. (1885) 74, Sec. 15.

California Legislation: See Civ. Code

1872, Sec. 2967; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 5.
PLEDGE.

Section

- 3421. Pledge defined.
- 3422. Delivery essential to validity.
- 3423. Increase of property pledged.
- 3424. Lienor may pledge property.
- 3425. Secret owner cannot defeat pledge.
- 3426. Pledge holder defined.
- 3427. Same: Must enforce rights.
- 3428. Misrepresentation of value: Further pledge.
- 3429. Sale to satisfy pledge.
- 3430. Same: Demand of performance.

Section

- 3431. Notice of sale.
- 3432. Waiver of notice.
- 3433. Waiver of demand of performance.
- 3434. Sale must be public.
- 3435. Collection or sale of securities.
- 3436. Sale on demand of pledgor.
- 3437. Surplus paid to pledgor.
- 3438. Sale before maturity.
- 3439. Pledgee cannot purchase.
- 3440. Foreclosure by pledgee.

Pledge Defined.

Sec. 3421. Every contract by which the possession of personal property is transferred as security only, is to be deemed a pledge.

Historical: Rev. St. 1887, Sec. 3410.	Code 1872, Sec. 2987; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Delivery Essential to Validity.

Sec. 3422. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed.

Historical: Rev. St. 1887, Sec. 3411.	Code 1872, Sec. 2988; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Increase of Property Pledged.

Sec. 3423. The increase of property pledged is pledged with the property.

Historical: Rev. St. 1887, Sec. 3412.	Code 1872, Sec. 2989; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Lienor May Pledge Property.

Sec. 3424. One who has a lien upon property may pledge it to the extent of his lien.

Historical: Rev. St. 1887, Sec. 3413.	Code 1872, Sec. 2990; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Secret Owner Cannot Defeat Pledge.

Sec. 3425. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property made by the other, to a pledgee who received the property in good faith, in the ordinary course of business and for value.

Historical: Rev. St. 1887, Sec. 3414.	Cited: Bryan v Montandon (1898)
California Legislation: Same: Civ.	6 Ida. 352; 55 Pac. 650.
Code 1872, Sec. 2991; Deering's Code,	
ib.; Kerr's Code, ib.	

Pledge Holder Defined.

Sec. 3426. A pledgor and pledgee may agree on a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

Historical: Rev. St. 1887, Sec. 3415.
California Legislation: Same: Civ.

Code 1872, Sec. 2993; Deering's Code, ib.; Kerr's Code, ib.

Same: Must Enforce Rights.

Sec. 3427. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Historical: Rev. St. 1887, Sec. 3416.
California Legislation: Same: Civ.

Code 1872, Sec. 2996; Deering's Code, ib.; Kerr's Code, ib.

Misrepresentation of Value: Further Pledge.

Sec. 3428. Where a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented, and in default thereof may recover his debt immediately, though it be not actually due.

Historical: Rev. St. 1887, Sec. 3417.
California Legislation: Same: Civ.

Code 1872, Sec. 2999; Deering's Code, ib.; Kerr's Code, ib.

Sale to Satisfy Pledge.

Sec. 3429. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

Historical: Rev. St. 1887, Sec. 3418.
California Legislation: Same: Civ.

Code 1872, Sec. 3000; Deering's Code, ib.; Kerr's Code, ib.

Same: Demand of Performance.

Sec. 3430. Before property pledged may be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

Historical: Rev. St. 1887, Sec. 3419.
California Legislation: Same except "if the debtor can be found" omitted:

Civ. Code 1872, Sec. 3001; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Notice of Sale.

Sec. 3431. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

Historical: Rev. St. 1887, Sec. 3420.
California Legislation: Same: Civ.

Code 1872, Sec. 3002; Deering's Code, ib.; Kerr's Code, ib.

Waiver of Notice.

Sec. 3432. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Historical: Rev. St. 1887, Sec. 3421.
California Legislation: Same: Civ.

Code 1872, Sec. 3003; Deering's Code, ib.; Kerr's Code, ib.

Waiver of Demand of Performance.

Sec. 3433. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform after performance is due; but cannot waive it in any other manner except by contract.

Historical: Rev. St. 1887, Sec. 3422.	Code 1872, Sec. 3004; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Sale Must Be Public.

Sec. 3434. The sale by a pledgee of property pledged, must be made by public auction in the manner and upon the notice required upon sale of personal property under execution; and must be for the highest obtainable price.

Historical: Rev. St. 1887, Sec. 3423.	property under execution: Secs. 4482-
California Legislation: Similar: Civ.	4489.
Code 1872, Sec. 3005; Deering's Code,	Cited: (Dis. op.) First Natl. Bank of
ib.; Kerr's Code, ib.	Pocatello v. Bunting & Co. (1900) 7
Cross Reference: Sales of personal	Ida. 387; 63 Pac. 694.

Collection or Sale of Securities.

Sec. 3435. A pledgee cannot sell any evidence of debt pledged to him except the obligations of governments, States, Territories, counties or corporations; but he may collect the same when due.

Historical: Rev. St. 1887, Sec. 3434.	ted: Civ. Code 1872, Sec. 3006; Deering's
California Legislation: Same except	Code, ib.; Kerr's Code, ib.
"Territories, counties", line 2, omit-	

Sale on Demand of Pledgor.

Sec. 3436. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold and its proceeds to be applied to such satisfaction when due.

Historical: Rev. St. 1887, Sec. 3425.	Code 1872, Sec. 3007; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Surplus Paid to Pledgor.

Sec. 3437. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor on demand.

Historical: Rev. St. 1887, Sec. 3426.	Code 1872, Sec. 3008; Deering's Code,
California Legislation: Same: Civ.	ib.; Kerr's Code, ib.

Sale Before Maturity.

Sec. 3438. When property pledged is sold before the claim of the pledgee is due, he may retain out of the proceeds all that can possibly become due under his claim, until it becomes due.

Historical: Rev. St. 1887, Sec. 3427.	3009; similar as amended: Deering's
California Legislation: Same with	Code, ib.; Kerr's Code, ib.
additional clause: Civ. Code 1872, Sec.	

Pledgee Cannot Purchase.

Sec. 3439. A pledgee, or pledge holder, cannot purchase the property pledged, except by direct dealing with the pledgor.

Historical: Rev. St. 1887, Sec. 3428. California Legislation: Same: Civ. Code 1872, Sec. 3010; Deering's Code,	ib.; different as amended: Kerr's Code, ib.
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Foreclosure by Pledgee.

Sec. 3440. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

Historical: Rev. St. 1887, Sec. 3429. California Legislation: Same: Civ.	Code 1872, Sec. 3011; Deering's Code, ib.; Kerr's Code, ib.
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CHAPTER 6.
MISCELLANEOUS LIENS.

Section	Section
3441. Vendor's lien.	3446. Liens for services on caring for property.
3442. Waiver of lien.	3447. Same: For repair of property.
3443. Extent of vendor's lien.	3448. Lien of factor.
3444. Seller's lien on personal property.	3449. Lien of banker.
3445. Lien of purchaser of real property.	3450. Lien of mechanics.

Vendor's Lien.

Sec. 3441. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

Historical: Rev. St. 1887, Sec. 3440. California Legislation: Same: Civ. Code 1872, Sec. 3046; Deering's Code, ib.; Kerr's Code, ib.	Cited: Ferguson v. Blood (1907) 152 Fed. Rep. 98.
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Waiver of Lien.

Sec. 3442. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

Historical: Rev. St. 1887, Sec. 3441. California Legislation: Same: Civ.	Code 1872, Sec. 3047; Deering's Code, ib.; Kerr's Code, ib.
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Extent of Vendor's Lien.

Sec. 3443. The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

Historical: Rev. St. 1887, Sec. 3442. California Legislation: Similar: Civ.	Code 1872, Sec. 3048; Deering's Code, ib.; Kerr's Code, ib.
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Sellers' Lien on Personal Property.

Sec. 3444. One who sells personal property has a specific lien thereon, dependent on possession, for its price, if it is in his pos-

session when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

Historical: Rev. St. 1887, Sec. 3443.

California Legislation: Same: Civ. Code 1872, Sec. 3049; Deering's Code, ib.; Kerr's Code, ib.

Duration of Lien: A vendor's lien on personal property only exists so

long as the vendor retains possession; there is no such lien in case of a conditional sale with reservation of title in the vendor and transfer of possession to the vendee. *Barton v. Groseclose* (1905) 11 Ida. 227; 81 Pac. 623.

Lien of Purchaser of Real Property.

Sec. 3445. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Historical: Rev. St. 1887, Sec. 3444.

California Legislation: Same: Civ.

Code 1872, Sec. 3050; Deering's Code, ib.; Kerr's Code, ib.

Liens for Services on or Caring for Property.

Sec. 3446. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor, or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due him from the owner, for such service. Livery or boarding or feed stable proprietors, and persons pasturing livestock of any kind, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding or pasturing such livestock. If the liens as herein provided are not paid within sixty days after the work is done, service rendered, or feed or pasturing supplied, the person in whose favor such special lien is created may proceed to sell the property at public auction, after giving ten days' public notice of the sale by advertising in some newspaper published in the county where such property is situated, or if there be no newspaper published in the county then by posting notices of the sale in three of the most public places in the county, for ten days previous to such sale. The proceeds of the sale must be applied to the discharge of the lien and costs; the remainder if any must be paid over to the owner.

Historical: Rev. St. 1887, Sec. 3445; amended Laws 1893, 67, Sec. 1; re-enacted Laws 1899, 181, Sec. 1.

California Legislation: Same through "service", line 6, rest omitted: Civ. Code 1872, Sec. 3051; similar through "livestock", line 9, as amended: Deering's Code, ib.; further amended: Kerr's Code, ib.

Lien for Service: A party placed in charge of mining property consisting of both personal and real estate, has a lien on the personal property for the value of his services so long as he re-

mains in possession. *Idaho Comstock etc. Co. v. Lundstrum* (1903) 9 Ida. 257; 74 Pac. 975.

Where two or three tenants in common in possession of personal property employ another to care for and protect the property, the latter is entitled to a lien dependent on possession for his pay for his services in caring for the same, but is not entitled to a lien on real property for the care and protection of either the real estate or the personal property. *Williamson v. Moore* (1905) 10 Ida. 749; 80 Pac. 227.

Same: For Repair of Property.

Sec. 3447. A person who makes, alters, or repairs any article of personal property, at the request of the owner, has a lien on the same

for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

Historical: Rev. St. 1887, Sec. 3446.	"owner", line 2: Civ. Code 1872, Sec. 3052; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same except "or legal possessor" inserted after	

Lien of Factor.

Sec. 3448. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

Historical: Rev. St. 1887, Sec. 3447.	Code 1872, Sec. 3053; Deering's Code, ib.; Kerr's Code, ib.
California Legislation: Same: Civ.	

Lien of Banker.

Sec. 3449. A banker has a general lien, dependent on possession, upon all property in his hands, belonging to a customer, for the balance due to him from such customer in the course of the business.

Historical: Rev. St. 1878, Sec. 3448.	ing business, and does not operate to afford a lien on a stock of merchandise transferred to a bank in such a manner as to constitute a preference under the bankruptcy law. In re Gesas (1906) 146 Fed. 734.
California Legislation: Same: Civ. Code 1872, Sec. 3054; Deering's Code, ib.; Kerr's Code, ib.	
Application: This section is limited in its application to property taken by a banker in the usual course of bank-	

Lien of Mechanics.

Sec. 3450. The liens of mechanics, for materials and services upon real property, are regulated by the Code of Civil Procedure.

Historical: Rev. St. 1887, Sec. 3449.	Cross Reference: Mechanics' liens: Secs. 5110-5150.
California Legislation: Same: Civ. Code 1872, Sec. 3059; Deering's Code, ib.; Kerr's Code, ib.	

CHAPTER 7.
LIENS FOR SERVICE OF SIRES.

Section	Section
3451. Notice of lien to be filed.	3455. Statement of account of services.
3452. Judgment enforcing lien.	3456. Exemption denied on compliance with chapter.
3453. Statement of description and pedigree.	3457. Fees of auditor.
3454. Certificate by auditor.	

Note: A similar act appears in the Washington Codes: Bal. An. Codes and St. Vol. 1, Secs. 3442-3446.

Notice of Lien to Be Filed.

Sec. 3451. All owners or any person having in charge a stallion, bull or jack, shall have a lien for the service of the stallion, bull or jack upon the mare or cow served by any stallion, bull or jack, and upon the offspring of the mare or cow served by any stallion, bull or jack: *Provided*, That in case the owner of such stallion, bull or jack desires to retain a lien upon any mare or cow served in the manner above mentioned, the owner of such stallion, bull or jack shall, within ninety days after such service, file with the recorder of the county, where such mare or cow is situated, a notice in writing containing a particular description of said mare or cow, when served, and the amount of lien claimed upon same, which notice, when filed as aforesaid, shall operate as notice to subsequent purchasers and encumbrancers in good faith for the term of one year from the filing of such notice.

Historical: Laws 1905, 232, Sec. 1.

Judgment Enforcing Lien.

Sec. 3452. On all judgments rendered in any court in this State for the service of any stallion, bull or jack, upon any mare or cow, an execution issued upon such judgment may be levied upon the mare or cow served by any stallion, bull or jack, and upon the offspring of the mare or cow so served, and said mare or cow and the offspring thereof may be sold in the manner provided by law for the sale of personal property levied upon by virtue of an execution. The proceeds of the sale must be applied to the payment of the judgment and all costs of the sale of the property levied upon; the remainder, if any, must be paid over to the owner of the mare or cow, or to the owner of the offspring thereof.

Historical: Laws 1905, 232, Sec. 2.

Statement of Description and Pedigree.

Sec. 3453. In order to protect parties in this State against damage resulting from breeding to sires advertised with bogus or fraudulent pedigrees, and to secure the owners of sires payment for services, it is provided as follows: Every owner of a sire charging a service fee, in order to have a lien upon the get of any such sire, under the provisions of this chapter, for said service, shall file a statement, verified by oath or affirmation to the best of his knowledge and belief, with the auditor of the county in which said sire is kept, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service.

Historical: Laws 1905, 232, Sec. 3.

Certificate by Auditor.

Sec. 3454. The auditor, upon receipt of the statement specified in the preceding section, duly verified by affidavit, shall issue a certificate to the owner of said sire, a copy of which certificate shall be filed with the auditor in any county in which said sire is stationed or located for service, and said certificate shall state the name, age, description, pedigree and ownership of said sire, the terms and condi-

tions upon which the sire is advertised for service, and that the provisions of this chapter so far as relates to the filing of the statement aforesaid, have been complied with.

Historical: Laws 1905, 232, Sec. 4.

Statement of Account of Services.

Sec. 3455. The owner or owners of any sire receiving such certificate shall obtain and have a lien upon the get of any such sire for a period of eighteen months from the date of birth of the get, and said lien shall have priority over all other liens and encumbrances upon the get of any such sire: *Provided*, That said owner or owners shall, within twelve months of the time of rendition of such service by said certified sire, file for record a statement of account, properly verified with the auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served.

Historical: Laws 1905, 232, Sec. 5.

Exemption Denied on Compliance With Chapter.

Sec. 3456. No get of any such sire shall be exempt from levy and sale under execution issued upon a judgment obtained in any court of competent jurisdiction for said service: *Provided*, That the court rendering such judgment shall find and certify in the record of the same that the plaintiff or plaintiffs have complied with the provisions of this chapter, and that the progeny sought to be levied upon is subject to the lien created.

Historical: Laws 1905, 232, Sec. 6.

Fees of Auditor.

Sec. 3457. For filing the certificate, making copy of such affidavit or affirmation, and the certification of the date of such filing, the auditor shall be entitled to the same fees as are provided by law for like services in regard to chattel mortgages.

Historical: Laws 1905, 232, Sec. 7.

Cross Reference: Fees for filing
chattel mortgages: Sec. 3409.

TITLE 13

NEGOTIABLE INSTRUMENTS

Chapter

1. Form and interpretation.
2. Consideration.
3. Negotiation.
4. Rights of holder.
5. Liabilities of parties.
6. Presentment for payment.
7. Notice of dishonor.

Chapter

8. Discharge of negotiable instruments.
9. Bills of exchange.
10. Acceptance.
11. General provisions.
12. Instruments made negotiable by indorsement.

Note: The first twelve chapters of this title constitute the "Uniform Negotiable Instrument Law" which is a codification of the law governing negotiable instruments. It is here reproduced without any change being made in the classification or arrangement of sections, except that "chapters" are substituted for "Articles". In 1900 this law had been adopted in the following fifteen States, besides the District of Columbia, viz: New York, Massachusetts, Connecticut, Rhode Island, Maryland, Tennessee, Virginia, North Carolina, Florida, Wisconsin, Colorado, Washington, Oregon, Utah and North Dakota. Later statistics are not available. So much of Title 13 of the Civil Code, Rev. St. 1887, as treated of the subjects contained in these chapters is deemed repealed regardless of its consistency or inconsistency with the subject matter of these chapters, because to have retained it would have destroyed the uniformity which it was the object of the Uniform Negotiable Instrument Law to attain.

For negotiable warehouse receipts see Secs. 1486, 1487, 1491. Negotiable county bonds: Pol. Code, Tit. 11, Chap. 2, Art. 6. Negotiable municipal bonds: Pol. Code, Tit. 13, Chaps. 12, 13, 14.

CHAPTER 1.

FORM AND INTERPRETATION.

Section

3458. Requirements of negotiable instruments.
3459. When sum payable is a sum certain.
3460. When unqualified order is unconditional.
3461. When payable at a determinable future time.
3462. Provisions which do not affect negotiability.
3463. Facts which do not affect validity.
3464. When instrument is payable on demand.
3465. When instrument is payable to order.
3466. When instrument is payable to bearer.
3467. Language of instrument.

Section

3468. Date deemed to be true.
3469. Effect of ante-dating and post-dating.
3470. Blank date may be filled by holder.
3471. Completion of instrument by holder.
3472. Unauthorized negotiation of incomplete instrument.
3473. Delivery essential to validity.
3474. Rules of construction.
3475. Use of assumed name.
3476. Signature by agent.
3477. Liability by agent.
3478. Signature by procuration.
3479. Indorsement by corporation or infant.
3480. Forged signature.

Requirements of Negotiable Instruments.

Sec. 3458. An instrument to be negotiated must conform to the following requirements:

First. It must be in writing and signed by the maker or drawer.

Second. Must contain an unconditional promise or order to pay a sum certain in money.

Third. Must be payable on demand or at a fixed or determinable future time.

Fourth. Must be payable to the order of a specified person or to bearer; and,

Fifth. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Historical: Laws 1903, 380, Sec. 1.

When Sum Payable Is a Sum Certain.

Sec. 3459. The sum payable is a sum certain within the meaning of this title; although it is to be paid:

First. With interest; or,

Second. By stated installments; or,

Third. By stated installments, with a provision that upon default in payment of any installment, the whole shall become due; or,

Fourth. With exchange, whether at a fixed rate or at the current rate; or,

Fifth. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Historical: Laws 1903, 380, Sec. 2.

When Unqualified Order Is Unconditional.

Sec. 3460. An unqualified order or promise to pay is unconditional within the meaning of this title, though coupled with:

First. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or,

Second. A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Historical: Laws 1903, 380, Sec. 3.

When Payable at a Determinable Future Time.

Sec. 3461. An instrument is payable at a determinable future time, within the meaning of this title, which is expressed to be payable:

First. At a fixed rate period after date or sight; or,

Second. On or before a fixed or determinable future time specified therein; or,

Third. On or at a fixed period after the concurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Historical: Laws 1903, 380, Sec. 4.

Provisions Which Do Not Affect Negotiability.

Sec. 3462. An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable. But

the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

First. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

Second. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

Third. Waives the benefit of any law intended for the advantage or protection of the obligor; or,

Fourth. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Historical: Laws 1903, 380, Sec. 5.

Facts Which Do Not Affect Validity.

Sec. 3463. The validity and negotiable character of an instrument are not affected by the fact that:

First. It is not dated; or,

Second. Does not specify the value given, or that any value has been given therefor; or,

Third. Does not specify the place where it is drawn or the place where it is payable; or,

Fourth. Bears a seal; or,

Fifth. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Historical: Laws 1903, 380, Sec. 6.

When Instrument Is Payable on Demand.

Sec. 3464. An instrument is payable on demand:

First. Where it is expressed to be payable on demand, or at sight, or on presentation; or,

Second. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

Historical: Laws 1903, 380, Sec. 7.

When Instrument Is Payable to Order.

Sec. 3465. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

First. A payee who is not maker, drawer or drawee; or,

Second. The drawer or maker; or,

Third. The drawee; or,

Fourth. Two or more payees jointly; or,

Fifth. One or some of several payees; or,

Sixth. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

Historical: Laws 1903, 380, Sec. 8.

When Instrument Is Payable to Bearer.

Sec. 3466. The instrument is payable to bearer:

First. When it is expressed to be so payable; or,

Second. When it is payable to a person named therein or bearer; or,

Third. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or,

Fourth. When the name of the payee does not purport to be the name of any person; or,

Fifth. When the only or last indorsement is an indorsement in blank.

Historical: Laws 1903, 380, Sec. 9.

Language of Instrument.

Sec. 3467. The negotiable instrument need not follow the language of this title, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

Historical: Laws 1903, 380, Sec. 10.

Date Deemed to Be True.

Sec. 3468. When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

Historical: Laws 1903, 380, Sec. 11.

Effect of Ante-Dating and Post-Dating.

Sec. 3469. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Historical: Laws 1903, 380, Sec. 12.

Blank Date May Be Filled by Holder.

Sec. 3470. When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Historical: Laws 1903, 380, Sec. 13.

Completion of Instrument by Holder.

Sec. 3471. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by a person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order,

however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Historical: Laws 1903, 380, Sec. 14.

Unauthorized Negotiation of Incomplete Instrument.

Sec. 3472. Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Historical: Laws 1903, 380, Sec. 15.

Delivery Essential to Validity.

Sec. 3473. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument.

But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Historical: Laws 1903, 380, Sec. 16.

Rules of Construction.

Sec. 3474. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

First. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

Second. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

Third. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

Fourth. When there is conflict between the written and printed provisions of the instrument, the written provisions prevail;

Fifth. Where the instrument is so ambiguous that there is doubt

whether it is a bill or a note, the holder may treat it as either, at his election;

Sixth. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

Seventh. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Historical: Laws 1903, 380, Sec. 17.

Use of Assumed Name.

Sec. 3475. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Historical: Laws 1903, 380, Sec. 18.

Signature by Agent.

Sec. 3476. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Historical: Laws 1903, 380, Sec. 19.

Liability of Agent.

Sec. 3477. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of the principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability.

Historical: Laws 1903, 380, Sec. 20.

Signature by Procuration.

Sec. 3478. A signature by "procuration" operates as notice that the agent has but limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Historical: Laws 1903, 380, Sec. 21.

Indorsement by Corporation or Infant.

Sec. 3479. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Historical: Laws 1903, 380, Sec. 22.

Forged Signature.

Sec. 3480. Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a dis-

charge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Historical: Laws 1903, 380, Sec. 23.

CHAPTER 2.
CONSIDERATION.

- Section
- 3481. Presumption of consideration.
 - 3482. Value defined.
 - 3483. Holder for value defined.
 - 3484. Same: Holder having lien.

- Section
- 3485. Failure of consideration as defense.
 - 3486. Accommodation indorser defined: Liability.

Presumption of Consideration.

Sec. 3481. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

Historical: Laws 1903, 380, Sec. 24.

Value Defined.

Sec. 3482. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such, whether the instrument is payable on demand or at a future time.

Historical: Laws 1903, 380, Sec. 25.

Holder for Value Defined.

Sec. 3483. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Historical: Laws 1903, 380, Sec. 26.

Same: Holder Having Lien.

Sec. 3484. Whether the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Historical: Laws 1903, 380, Sec. 27.

Failure of Consideration as Defense.

Sec. 3485. Absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Historical: Laws 1903, 380, Sec. 28.

Accommodation Indorser Defined: Liability.

Sec. 3486. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for

value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

Historical: Laws 1903, 380, Sec. 29.

CHAPTER 3. NEGOTIATION.

Section	Section
3487. When instrument is negotiated.	3498. Indorsement by several payees.
3488. Indorsement: How made.	3499. Instrument payable to cashier: Indorsement.
3489. Indorsement must be of entire instrument.	3500. Misspelled names: Indorsement.
3490. Kinds of indorsements.	3501. Indorsement in representative capacity.
3491. Special and blank indorsements defined.	3502. Presumption of negotiation before maturity.
3492. Blank indorsement converted into special.	3503. Presumption as to place of indorsement.
3493. Restrictive indorsement defined.	3504. Continuation or negotiability.
3494. Rights under restrictive indorsement.	3505. Striking out indorsement.
3495. Qualified indorsement: Effect.	3506. Transfer without indorsement.
3496. Conditional indorsement: Effect.	3507. Reissue and negotiation.
3497. Liability under special indorsement.	

When Instrument Is Negotiated.

Sec. 3487. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof; if payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery.

Historical: Laws 1903, 380, Sec. 30.

Indorsement: How Made.

Sec. 3488. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Historical: Laws 1903, 380, Sec. 31.

Indorsement Must Be of Entire Instrument.

Sec. 3489. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsee severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Historical: Laws 1903, 380, Sec. 32.

Kinds of Indorsements.

Sec. 3490. An indorsement may be either in blank or special; and it may also be either restrictive or qualified or conditional.

Historical: Laws 1903 380, Sec. 33.

Special and Blank Indorsements Defined.

Sec. 3491. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Historical: Laws 1903, 380, Sec. 34.

Blank Indorsement Converted Into Special.

Sec. 3492. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Historical: Laws 1903, 380, Sec. 35.

Restrictive Indorsement Defined.

Sec. 3493. An indorsement is restrictive which either:

First. Prohibits the further negotiation of the instrument; or,

Second. Constitutes the indorsee the agent of the indorser; or,

Third. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Historical: Laws 1903, 380, Sec. 36.

Rights Under Restrictive Indorsement.

Sec. 3494. A restrictive indorsement confers upon the indorsee the right:

First. To receive payment of the instrument.

Second. To bring any action thereon that the indorser could bring:

Third. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Historical: Laws 1903, 380, Sec. 37.

Qualified Indorsement: Effect.

Sec. 3495. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "Without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Historical: Laws 1903, 380, Sec. 38.

Conditional Indorsement: Effect.

Sec. 3496. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make a payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Historical: Laws 1903, 380, Sec. 39.

Liability Under Special Indorsement.

Sec. 3497. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as to make title through his indorsement.

Historical: Laws 1903, 380, Sec. 40.

Indorsement by Several Payees.

Sec. 3498. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.

Historical: Laws 1903, 380, Sec. 41.

Instrument Payable to Cashier: Indorsement.

Sec. 3499. Where an instrument is drawn or indorsed to a person, as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Historical: Laws 1903, 380, Sec. 42.

Misspelled Names: Indorsement.

Sec. 3500. Where the name of the payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described adding, if he think fit, his proper signature.

Historical: Laws 1903, 380, Sec. 43.

Indorsement in Representative Capacity.

Sec. 3501. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Historical: Laws 1903, 380, Sec. 44.

Presumption of Negotiation Before Maturity.

Sec. 3502. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Historical: Laws 1903, 380, Sec. 45.

Presumption as to Place of Indorsement.

Sec. 3503. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Historical: Laws 1903, 380, Sec. 46.

Continuation of Negotiability

Sec. 3504. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Historical: Laws 1903, 380, Sec. 47.

Striking Out Indorsement.

Sec. 3505. The owner may at any time strike out any indorsement which is not necessary to this title. The indorser whose indorsement is struck out, and all indorseees subsequent to him, are thereby relieved from liability on the instrument.

Historical: Laws 1903, 380, Sec. 48.

Transfer Without Indorsement.

Sec. 3506. When the holder of an instrument payable to his order transfers it for value without indorsing it, the transferer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Historical: Laws 1903, 380, Sec. 49.

Re-Issue and Negotiation.

Sec. 3507. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this title, re-issue and further negotiate the same; but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Historical: Laws 1903, 380, Sec. 50.

CHAPTER 4.

RIGHTS OF HOLDER.

Section	Section
3508. Suit by and payment to holder.	3514. Title and rights of holder in due course.
3509. Holder in due course defined.	3515. Defenses to negotiable instruments.
3510. Same: Delay in negotiation.	3516. Presumption as to holding in due course.
3511. Same: Notice before full payment.	
3512. When title is defective.	
3513. What constitutes notice of infirmity.	

Suit by and Payment to Holder.

Sec. 3508. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

Historical: Laws 1903 380, Sec. 51.

Holder in Due Course Defined.

Sec. 3509. A holder in due course, is a holder who has taken the instrument under the following conditions:

- First. That the instrument is complete and regular upon its face;
- Second. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- Third. That he took it in good faith and for value;
- Fourth. That at the time it was negotiated to him he had no no-

tice of any infirmity in the instrument or defect in the title of the person negotiating it.

Historical: Laws 1903, 380, Sec. 52.

Same: Delay in Negotiation.

Sec. 3510. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Historical: Laws 1903, 380, Sec. 53.

Same: Notice Before Full Payment.

Sec. 3511. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Historical: Laws 1903, 380, Sec. 54.

When Title is Defective.

Sec. 3512. The title of a person who negotiates an instrument is defective within the meaning of this title when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.

Historical: Laws 1903, 380, Sec. 55.

What Constitutes Notice of Infirmity.

Sec. 3513. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Historical: Laws 1903, 380, Sec. 56.

Title and Rights of Holder in Due Course.

Sec. 3514. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Historical: Laws 1903, 380, Sec. 57.

Defenses to Negotiable Instruments.

Sec. 3515. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Historical: Laws 1903, 380, Sec. 58.

Presumption as to Holding in Due Course.

Sec. 3516. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

Historical: Laws 1903, 380, Sec. 59.

CHAPTER 5.
LIABILITIES OF PARTIES.

Section	Section
3517. Liability of maker.	3523. Warranty implied from indorsement.
3518. Liability of drawer.	3524. Liability of indorser of bearer paper.
3519. Liability of acceptor.	3525. Order of liability of indorsers.
3520. Signature in blank deemed indorsement.	3526. Negotiation by agent without indorsement.
3521. Same.	
3522. Warranty implied from delivery.	

Liability of Maker.

Sec. 3517. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Historical: Laws 1903, 380, Sec. 60.

Liability of Drawer.

Sec. 3518. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negotiating or limiting his own liability to the holder.

Historical: Laws 1903, 380, Sec. 61.

Liability of Acceptor.

Sec. 3519. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

First. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and,

Second. The existence of the payee and his then capacity to indorse.

Historical: Laws 1903, 380, Sec. 62.

Signature in Blank Deemed Indorsement.

Sec. 3520. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser,

unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Historical: Laws 1903, 380 Sec. 63.

Same.

Sec. 3521. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

First. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties:

Second. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer;

Third. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Historical: Laws 1903, 380, Sec. 64.

Warranty Implied From Delivery.

Sec. 3522. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

First. That the instrument is genuine and in all respects what it purports to be;

Second. That he has a good title to it;

Third. That all prior parties had capacity to contract;

Fourth. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

Historical: Laws 1903, 380, Sec. 65.

Warranty Implied From Indorsement.

Sec. 3523. Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

First. The matters and things mentioned in subdivisions one, two and three of the next preceding section; and,

Second. That the instrument is at the time of his indorsement valid and subsisting.

And in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Historical: Laws 1903, 380, Sec. 66.

Liability of Indorser: The undertaking of an indorser is conditional; that is, his promise is that he will pay provided payment shall first have been

properly demanded of the maker and due notice of the maker's neglect or refusal shall have been given. *Ankeny v. Henry* (1869) 1 Ida. 229.

Liability of Indorser of Bearer Paper.

Sec. 3524. Where a person places his indorsement on an instru-

ment negotiable by delivery he incurs all the liabilities of an indorser.

Historical: Laws 1903, 380, Sec. 67.

Order of Liability of Indorsers.

Sec. 3525. As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Historical: Laws 1903, 380, Sec. 68.

Negotiation by Agent Without Indorsement.

Sec. 3526. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by Section 3522 unless he discloses the name of his principal, and the fact that he is acting only as agent.

Historical: Laws 1903, 380, Sec. 69.

CHAPTER 6.

PRESENTMENT FOR PAYMENT.

Section

- 3527. When necessary.
- 3528. When to be made.
- 3529. How made.
- 3530. When made at proper place.
- 3531. Delivery of instrument on payment.
- 3532. Presentment during banking hours.
- 3533. Presentment to personal representative.
- 3534. Presentment to partners.
- 3535. Presentment to several persons **liable.**
- 3536. Presentment to drawer: When unnecessary.

Section

- 3537. Presentment to indorser: When unnecessary.
- 3538. Excuses for delay.
- 3539. When presentment is unnecessary.
- 3540. Dishonor by non-payment.
- 3541. Same: Recourse against indorser.
- 3542. When instrument is payable.
- 3543. Day of payment: How determined.
- 3544. Instrument payable at bank.
- 3545. Payment in due course.

When Necessary.

Sec. 3527. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Historical: Laws 1903, 380, Sec. 70.

Demand Unnecessary: Demand of payment from the maker of a promissory note at maturity is unnecessary

in order to bring suit against him. *Sabin v. Burke* (1894) 4 Ida. 28; 37 Pac. 352.

When to Be Made.

Sec. 3528. Where the instrument is not payable on demand, presentment must be made on the day it falls due.

Where it is payable on demand, presentment must be made with-

in a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Historical: Laws 1903, 380, Sec. 71.

How Made.

Sec. 3529. Presentment for payment, to be sufficient, must be made:

First. By the holder, or by some person authorized to receive payment on his behalf;

Second. At a reasonable hour on a business day;

Third. At a proper place as herein defined;

Fourth. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Historical: Laws 1903, 380, Sec. 72.

When Made at Proper Place.

Sec. 3530. Presentment for payment is made at the proper place:

First. Where a place of payment is specified in the instrument and it is there presented;

Second. Where no place of payment is specified and the address of the person to make payment is given in the instrument and it is there presented;

Third. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

Fourth. In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Historical: Laws 1903, 380, Sec. 73.

Delivery of Instrument on Payment.

Sec. 3531. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Historical: Laws 1903, 380, Sec. 74.

Presentment During Banking Hours.

Sec. 3532. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Historical: Laws 1903, 380, Sec. 75.

Presentment to Personal Representative.

Sec. 3533. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

Historical: Laws 1903, 380, Sec. 76.

Presentment to Partners.

Sec. 3534. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Historical: Laws 1903, 380, Sec. 77.

Presentment to Several Persons Liable.

Sec. 3535. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Historical: Laws 1903, 380, Sec. 78.

Presentment to Drawer: When Unnecessary.

Sec. 3536. Presentment for payment is not required in order to charge the drawer when he has no right to expect or require that the drawee or acceptor will pay the instrument.

Historical: Laws 1903, 380, Sec. 79.

Presentment to Indorser: When Unnecessary.

Sec. 3537. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

Historical: Laws 1903, 380, Sec. 80.

Excuses for Delay.

Sec. 3538. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Historical: Laws 1903, 380, Sec. 81.

When Presentment is Unnecessary.

Sec. 3539. Presentment for payment is dispensed with:

First. Where after the exercise of reasonable diligence presentment as required by this title cannot be made;

Second. Where the drawee is a fictitious person;

Third. By waiver of presentment, express or implied.

Historical: Laws 1903, 380, Sec. 82.

Dishonor by Non-Payment.

Sec. 3540. The instrument is dishonored by non-payment when:

First. It is duly presented for payment and payment is refused or cannot be obtained; or,

Second. Presentment is excused and the instrument is overdue and unpaid.

Historical: Laws 1903, 380, Sec. 83.

Same: Recourse Against Indorser.

Sec. 3541. Subject to the provisions of this title, when the instru-

ment is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

Historical: Laws 1903, 380, Sec. 84.

When Instrument Is Payable.

Sec. 3542. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Historical: Laws 1903, 380, Sec. 85.

Date of Payment: How Determined.

Sec. 3543. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Historical: Laws 1903, 380, Sec. 86.

Instrument Payable at Bank.

Sec. 3544. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Historical: Laws 1903, 380, Sec. 87.

Payment in Due Course.

Sec. 3545. Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

Historical: Laws 1903, 380, Sec. 88.

CHAPTER 7.
NOTICE OF DISHONOR.

Section	Section
3546. To whom given.	3559 When to be given
3547. By whom given.	3560. Same: Parties residing in same place.
3548. Same: By agent.	3561. Same: Parties residing in different places.
3549. Notice inures for benefit of all parties.	3562. Notice by mail: When deemed given.
3550. Same.	3563. Same.
3551. Notice by agent to principal.	3564. Time for giving notice by party receiving same.
3552. Sufficiency of notice.	3565. Place for sending notice.
3553. Form and service of notice.	3566. Waiver of notice.
3554. May be given to party or agent.	3567. Same: parties bound.
3555. Notice to personal representative.	3568. Waiver of protest.
3556. Notice to partners.	3569. Notice dispensed with.
3557. Notice to joint parties.	
3558. Notice to bankrupt.	

Section

3570. Excuse for delaying notice.
 3571. Notice to drawer not required:
 When.
 3572. Notice to indorser not required:
 When.

Section

3573. Notice of non-payment unnecessary: When.
 3574. Failure to give notice of non-acceptance: Effect.
 3575. Protest: When necessary.

To Whom Given.

Sec. 3546. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Historical: Laws 1903, 380, Sec. 89.

By Whom Given.

Sec. 3547. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Historical: Laws 1903, 380, Sec. 90.

Same: By Agent.

Sec. 3548. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Historical: Laws 1903, 380, Sec. 91.

Notice Inures for Benefit of All Parties.

Sec. 3549. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Historical: Laws 1903, 380, Sec. 92.

Same.

Sec. 3550. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Historical: Laws 1903, 380, Sec. 93.

Notice by Agent to Principal.

Sec. 3551. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

Historical: Laws 1903, 380, Sec. 94.

Sufficiency of Notice.

Sec. 3552. A written notice need not be signed, and an insuffi-

cient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

Historical: Laws 1903, 380, Sec. 95.

Form and Service of Notice.

Sec. 3553. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mail.

Historical: Laws 1903, 380, Sec. 96.

May Be Given to Party or Agent.

Sec. 3554. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Historical: Laws 1903, 380, Sec. 97.

Notice to Personal Representative.

Sec. 3555. Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Historical: Laws 1903, 380, Sec. 98.

Notice to Partners.

Sec. 3556. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Historical: Laws 1903, 380, Sec. 99.

Notice to Joint Parties.

Sec. 3557. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Historical: Laws 1903, 380, Sec. 100.

Notice to Bankrupt.

Sec. 3558. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Historical: Laws 1903, 380, Sec. 101.

When to Be Given.

Sec. 3559. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this title.

Historical: Laws 1903, 380, Sec. 102.

Same: Parties Residing in Same Place.

Sec. 3560. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

First: If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

Second. If given at his residence, it must be given before the usual hours of rest on the day following;

Third. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following.

Historical: Laws 1903, 380, Sec. 103.

Same: Parties Residing in Different Places.

Sec. 3561. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

First. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter;

Second. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

Historical: Laws 1903, 380, Sec. 104.

Notice by Mail: When Deemed Given.

Sec. 3562. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Historical: Laws 1903, 380, Sec. 105.

Same.

Sec. 3563. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

Historical: Laws 1903, 380, Sec. 106.

Time for Giving Notice by Party Receiving Same.

Sec. 3564. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Historical: Laws 1903, 380, Sec. 107.

Place for Sending Notice.

Sec. 3565. Where a party has added an address to his signature notice of dishonor must be sent to that address; but if he is not given such address, then the notice must be sent as follows:

First. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or,

Second. If he lives in one place, and has his place of business in another, notice may be sent to either place; or,

Third. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this title, it will be sufficient, though not sent in accordance with the requirements of this section.

Historical: Laws 1903, 380, Sec. 108.

Waiver of Notice.

Sec. 3566. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be expressed or implied.

Historical: Laws 1903, 380, Sec. 109.

Same: Parties Bound.

Sec. 3567. Where the waiver is embodied in the instrument itself, it is binding upon all parties, but where it is written above the signature of an indorser, it binds him only.

Historical: Laws 1903, 380, Sec. 110.

Waiver of Protest.

Sec. 3568. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

Historical: Laws 1903, 380, Sec. 111.

Notice Dispensed With.

Sec. 3569. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to, or does not reach, the parties sought to be charged.

Historical: Laws 1903, 380, Sec. 112.

Excuses for Delaying Notice.

Sec. 3570. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Historical: Laws 1903, 380, Sec. 113.

Notice to Drawer Not Required: When.

Sec. 3571. Notice of dishonor is not required to be given to the drawer in either of the following cases:

First. When the drawer and drawee are the same person.

Second. Where the drawee is a fictitious person or a person not having capacity to contract.

Third. Where the drawer is the person to whom the instrument is presented for payment.

Fourth. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

Fifth. Where the drawer has countermanded payment.

Historical: Laws 1903, 380, Sec. 114.

Notice to Indorser Not Required: When.

Sec. 3572. Notice of dishonor is not required to be given to an indorser in either of the following cases:

First. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument;

Second. Where the indorser is the person to whom the instrument is presented for payment.

Third. Where the instrument was made or accepted, for his accommodation.

Historical: Laws 1903, 380, Sec. 115.

Notice of Non-Payment Unnecessary: When.

Sec. 3573. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Historical: Laws 1903, 380, Sec. 116.

Failure to Give Notice of Non-Acceptance: Effect.

Sec. 3574. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Historical: Laws 1903, 380, Sec. 117.

Protest: When Necessary.

Sec. 3575. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment as the case may be; but protest is not required, except in the case of foreign bills of exchange.

Historical: Laws 1903, 380, Sec. 118.

CHAPTER 8.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Section

- 3576. When instrument is discharged.
- 3577. Discharge of person secondarily liable.
- 3578. Payment by party secondarily liable.
- 3579. Renunciation of rights by holder.

Section

- 3580. Cancellation by mistake: Burden of proof.
- 3581. Alteration of instrument.
- 3582. Material alteration defined.

When Instrument Is Discharged.

Sec. 3576. A negotiable instrument is discharged:

First. By payment in due course by or on behalf of the principal debtor.

Second. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

Third. By the intentional cancellation thereof by the holder;

Fourth. By any other act which will discharge a simple contract for the payment of money;

Fifth. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Historical: Laws 1903, 380, Sec. 119.

Discharge of Person Secondarily Liable.

Sec. 3577. A person secondarily liable on the instrument is discharged:

First. By an act which discharges the instrument;

Second. By the intentional cancellation of his signature by the holder;

Third. By the discharge of a prior party;

Fourth. By a valid tender of payment made by a prior party;

Fifth. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

Sixth. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Historical: Laws 1903, 380, Sec. 120.

Payment by Party Secondarily Liable.

Sec. 3578. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

First. Where it is payable to the order of a third person, and had been paid by the drawer; and,

Second. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Historical: Laws 1903, 380, Sec. 121.

Renunciation of Rights by Holder.

Sec. 3579. The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Historical: Laws 1903, 380 Sec. 122.

Cancellation by Mistake: Burden of Proof.

Sec. 3580. A cancellation made unintentionally or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the can-

cellation was made unintentionally, or under a mistake or without authority.

Historical: Laws 1903, 380, Sec. 123.

Alteration of Instrument.

Sec. 3581. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Historical: Laws 1903, 380, Sec. 124.

Material Alteration Defined.

Sec. 3582. Any alteration which changes:
First. The date;
Second. The sum payable, either for principal or interest,
Third. The time or place of payment;
Fourth. The number or the relations of the parties;
Fifth. The medium of currency in which payment is to be made;
Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

Historical: Laws 1903, 380, Sec. 125.

CHAPTER 9.

BILLS OF EXCHANGE.

Section	Section
3583. Bill of exchange defined.	3587. When bill may be treated as note.
3584. Same: Operation.	3588. Referee in case of need.
3585. Same: How addressed.	
3586. Inland and foreign bills.	

Bill of Exchange Defined.

Sec. 3583. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money, to order or to bearer.

Historical: Laws 1903, 380, Sec. 126.

Same: Operation.

Sec. 3584. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Historical: Laws 1903, 380, Sec. 127.

Same: How Addressed.

Sec. 3585. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Historical: Laws 1903, 380, Sec. 128.

Inland and Foreign Bills.

Sec. 3586. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Historical: Laws 1903, 380, Sec. 129.

When Bill May Be Treated as Note.

Sec. 3587. Where in a bill, drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Historical: Laws 1903, 380, Sec. 130.

Referee in Case of Need.

Sec. 3588. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

Historical: Laws 1903, 380, Sec. 131.

CHAPTER 10. ACCEPTANCE.

Section

- 3589. Definition.
- 3590. Acceptance on bill may be required.
- 3591. Acceptance on separate paper.
- 3592. Promise to accept before drawing.
- 3593. Time in which to accept.
- 3594. Failure to return bill deemed an acceptance.
- 3595. When bill may be accepted.
- 3596. General and qualified acceptance.
- 3597. When acceptance is general.
- 3598. When acceptance is qualified.
- 3599. Refusal or acceptance of qualified acceptance.
- 3600. Presentment for acceptance: When necessary.
- 3601. Bill must be presented or negotiated.
- 3602. Presentment for acceptance: When and to whom to be made.
- 3603. Same.
- 3604. Lack of time to present bill for acceptance.
- 3605. Excuse for failure to present for acceptance.

Section

- 3606. Dishonor by non-acceptance.
- 3607. Same: Bill must be treated as dishonored.
- 3608. Dishonor: Recourse against drawers.
- 3609. Unaccepted foreign bill must be protested.
- 3610. Form of protest.
- 3611. Who may make protest.
- 3612. When protest must be made.
- 3613. Place of protest.
- 3614. Protest for non-acceptance and for non-payment.
- 3615. Protest where acceptor is bankrupt.
- 3616. When protest is dispensed with.
- 3617. Protest of lost bill.
- 3618. Acceptance for honor.
- 3619. Same: How made.
- 3620. Same: For whom made.
- 3621. Liability of acceptor for honor.
- 3622. Obligations of acceptor for honor.
- 3623. Maturity of sight draft accepted for honor.
- 3624. Protest of bill accepted for honor or containing reference.

Section

- 3625. Presentment to acceptor for honor.
- 3626. Same: Excuses for delay.
- 3627. Protest of bill dishonored by acceptor for honor.
- 3628. Payment for honor supra protest.
- 3629. Same: How made.
- 3630. Same: Notarial act of honor.
- 3631. Preference between prayers for honor.
- 3632. Payer subrogated to rights of holder.
- 3633. Refusal to accept payment supra protest.
- 3634. Payer for honor entitled to bill.
- 3635. Bills drawn in set.

Section

- 3636. Same: Different holders: Title.
- 3637. Same: Indorsement to different persons.
- 3638. Same: Acceptance.
- 3639. Same: Payment by acceptor.
- 3640. Same: Discharge.
- 3641. Negotiable promissory note defined.
- 3642. Check defined.
- 3642. When check must be presented for payment.
- 3644. Certification equivalent to acceptance.
- 3645. Certification discharges parties.
- 3646. Check not an assignment until accepted.

Definition.

Sec. 3589. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawer. It must not express that the drawee will perform his promise by any other means than the payment of money.

Historical: Laws 1903, 380 Sec. 132.

Acceptance on Bill May Be Required.

Sec. 3590. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

Historical: Laws 1903, 380, Sec. 133.

Acceptance on Separate Paper.

Sec. 3591. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Historical: Laws 1903, 380, Sec. 134.

Promise to Accept Before Drawing.

Sec. 3592. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Historical: Laws 1903, 380, Sec. 135.

Time in Which to Accept.

Sec. 3593. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

Historical: Laws 1903, 380, Sec. 136.

Failure to Return Bill Deemed an Acceptance.

Sec. 3594. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow.

to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Historical: Laws 1903, 380, Sec. 137.

When Bill May Be Accepted.

Sec. 3595. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Historical: Laws 1903, 380, Sec. 138.

General and Qualified Acceptance.

Sec. 3596. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Historical: Laws 1903, 380, Sec. 139.

When Acceptance Is General.

Sec. 3597. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Historical: Laws 1903, 380, Sec. 140.

When Acceptance Is Qualified.

Sec. 3598. An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
3. Local, that is to say, an acceptance to pay only at a particular place;
4. Qualified as to time;
5. The acceptance of some one or more of the drawees, but not of all.

Historical: Laws 1903, 380, Sec. 141.

Refusal or Acceptance of Qualified Acceptance.

Sec. 3599. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

Historical: Laws 1903, 380, Sec. 142.

Presentment for Acceptance: When Necessary.

Sec. 3600. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

2. Where the bill expressly stipulates that it shall be presented for acceptance; or,

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Historical: Laws 1903, 380, Sec. 143.

Bill Must Be Presented or Negotiated.

Sec. 3601. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time.

If he fail to do so, the drawer and all endorsers are discharged.

Historical: Laws 1903, 380, Sec. 144.

Presentment for Acceptance: When and to Whom to Be Made.

Sec. 3602. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and,

1. Where a bill is addressed to two or more drawers who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Historical: Laws 1903, 380, Sec. 145.

Same.

Sec. 3603. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of Sections 3529 and 3542 of this title.

When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day.

Historical: Laws 1903, 380, Sec. 146.

Lack of Time to Present Bill for Acceptance.

Sec. 3604. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

Historical: Laws 1903, 380, Sec. 147.

Excuses for Failure to Present for Acceptance.

Sec. 3605. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded or is a fictitious person or a person not having capacity to contract by bill;
2. Where after the exercise of reasonable diligence, presentment cannot be made;
3. Where although presentment has been irregular, acceptance has been refused on some ground.

Historical: Laws 1903, 380, Sec. 148.

Dishonor by Non-Acceptance.

Sec. 3606. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this title is refused or cannot be obtained; or,
2. Where a presentment for acceptance is excused and the bill is not accepted.

Historical: Laws 1903, 380, Sec. 149.

Same: Bill Must Be Treated as Dishonored.

Sec. 3607. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance, or he loses the right of recourse against the drawer and indorsers.

Historical: Laws 1903, 380, Sec. 150.

Dishonor: Recourse Against Drawers.

Sec. 3608. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holders, and no presentment for payment is necessary.

Historical: Laws 1903, 380, Sec. 151.

Unaccepted Foreign Bill Must Be Protested.

Sec. 3609. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof, in case of dishonor, is unnecessary.

Historical: Laws 1903, 380, Sec. 152.

Form of Protest.

Sec. 3610. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause and reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Historical: Laws 1903, 380, Sec. 153.

Who May Make Protest.

Sec. 3611. Protest may be made by:

1. A notary public; or,
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more creditable witnesses.

Historical: Laws 1903, 380, Sec. 154.

When Protest Must Be Made.

Sec. 3612. When the bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Historical: Laws 1903, 380, Sec. 155.

Place of Protest.

Sec. 3613. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no other presentment for payment to, or demand on, the drawee is necessary.

Historical: Laws 1903, 380, Sec. 156.

Protest for Non-Acceptance and for Non-Payment.

Sec. 3614. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Historical: Laws 1903, 380, Sec. 157.

Protest Where Acceptor Is Bankrupt.

Sec. 3615. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Historical: Laws 1903, 380, Sec. 158.

When Protest Is Dispensed With.

Sec. 3616. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Historical: Laws 1903, 380, Sec. 159.

Protest of Lost Bill.

Sec. 3617. Where a bill is lost or destroyed, or is wrongly detained

from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Historical: Laws 1903, 380, Sec. 160.

Acceptance for Honor.

Sec. 3618. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Historical: Laws 1903, 380, Sec. 161.

Same: How Made.

Sec. 3619. An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Historical: Laws 1903, 380, Sec. 162.

Same: For Whom Made.

Sec. 3620. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Historical: Laws 1903, 380, Sec. 163.

Liability of Acceptor for Honor.

Sec. 3621. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted it.

Historical: Laws 1903, 380, Sec. 164.

Obligations of Acceptor for Honor.

Sec. 3622. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance: *Provided*, It shall not have been paid by the drawee: *And Provided, also*, That it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

Historical: Laws 1903, 380, Sec. 165.

Maturity of Sight Draft Accepted for Honor.

Sec. 3623. When a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Historical: Laws 1903, 380, Sec. 166.

Protest of Bill Accepted for Honor or Containing Reference.

Sec. 3624. Where a dishonored bill has been accepted for honor

supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Historical: Laws 1903, 380, Sec. 167.

Presentment to Acceptor for Honor.

Sec. 3625. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

2. If it is to be presented in some other place where it was protested, then it must be forwarded within the time specified in Section 3561.

Historical: Laws 1903, 380, Sec. 168.

Same: Excuses for Delay.

Sec. 3626. The provisions of Section 3538 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Historical: Laws 1903, 380, Sec. 169.

Protest of Bill Dishonored by Acceptor for Honor.

Sec. 3627. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

Historical: Laws 1903, 380, Sec. 170.

Payment for Honor Supra Protest.

Sec. 3628. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Historical: Laws 1903, 380, Sec. 171.

Same: How Made.

Sec. 3629. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Historical: Laws 1903, 380, Sec. 172.

Same: Notarial Act of Honor.

Sec. 3630. The notarial act of honor must be founded on a declaration made by the payee for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Historical: Laws 1903, 380, Sec. 173.

Preference Between Payers for Honor.

Sec. 3631. Where two or more persons offer to pay a bill for the

honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Historical: Laws 1903, 380, Sec. 174.

Payer Subrogated to Rights of Holder.

Sec. 3632. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Historical: Laws 1903, 380, Sec. 175.

Refusal to Accept Payment Supra Protest.

Sec. 3633. Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment.

Historical: Laws 1903, 380, Sec. 176.

Payer for Honor Entitled to Bill.

Sec. 3634. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Historical: Laws 1903, 380, Sec. 177.

Bills Drawn in Set.

Sec. 3635. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

Historical: Laws 1903, 380, Sec. 178.

Same: Different Holders: Title.

Sec. 3636. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Historical: Laws 1903, 380, Sec. 179.

Same: Indorsement to Different Persons.

Sec. 3637. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Historical: Laws 1903, 380, Sec. 180.

Same: Acceptance.

Sec. 3638. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Historical: Laws 1903, 380, Sec. 181.

Same: Payment by Acceptor.

Sec. 3639. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Historical: Laws 1903, 380, Sec. 182.

Same: Discharge.

Sec. 3640. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Historical: Laws 1903, 380, Sec. 183.

Negotiable Promissory Note Defined.

Sec. 3641. A negotiable promissory note, within the meaning of this title, is an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Historical: Laws 1903, 380, Sec. 184.

Check Defined.

Sec. 3642. A Check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this title applicable to a bill of exchange payable on demand apply to a check.

Historical: Laws 1903, 380, Sec. 185.

When Check Must Be Presented for Payment.

Sec. 3643. A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Historical: Laws 1903, 380, Sec. 186.

Certification Equivalent to Acceptance.

Sec. 3644. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Historical: Laws 1903, 380, Sec. 187.

Certification Discharges Parties.

Sec. 3645. Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

Historical: Laws 1903, 380, Sec. 188.

Check Not an Assignment Until Accepted.

Sec. 3646. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

Historical: Laws 1903, 380, Sec. 189.

CHAPTER 11.

GENERAL PROVISIONS.

Section	Section
3647. Name of title.	3651. Last day falling on holiday.
3648. Definitions.	3652. Application of title.
3649. Primary and secondary liability.	3653. Law merchant to cover omitted case.
3650. Reasonable time: How determined.	

Name of Title.

Sec. 3647. This title shall be known as the Negotiable Instrument Law.

Historical: Laws 1903, 380, Sec. 190. This does not include Chapter 12,	which is no part of the uniform negotiable instrument law.
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Definitions.

Sec. 3648. In this title unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “Note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorser of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

Historical: Laws 1903, 380, Sec. 191.

Primary and Secondary Liability.

Sec. 3649. The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same.

All other parties are “secondarily” liable.

Historical: Laws 1903, 380, Sec. 192.

Reasonable Time: How Determined.

Sec. 3650. In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Historical: Laws 1903, 380, Sec. 193.

Last Day Falling on Holiday.

Sec. 3651. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Historical: Laws 1903, 380, Sec. 194.

Application of Title.

Sec. 3652. The provisions of this title do not apply to negotiable instruments made and delivered prior to the passage hereof.

Historical: Laws 1903, 380, Sec. 195. This title, with the exception of Chap-	ter 12, first became effective on March 10, 1903.
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Law Merchant to Govern. Omitted Cases.

Sec. 3653. In any case not provided for in this title, the rules of the law merchant shall govern.

Historical: Laws 1903, 380, Sec. 196.

CHAPTER 12.

INSTRUMENTS MADE NEGOTIABLE BY INDORSEMENT.

Section	Section
3654. Indorsement of written contract.	3655. Liability of indorser.

Indorsement of Written Contract.

Sec. 3654. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement transfers all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Historical: Rev. St. 1887, Sec. 3600.

Application: This and the following sections refer only to written evidences of debt sold and transferred for

value, and not to those deposited as collateral security. *Murphy v. Bartsch* (1890) 2 Ida. 636· 23 Pac. 82.

Liability of Indorser.

Sec. 3655. Every assignor, his heirs, executors, or administrators, of every such instrument in writing, is liable to the action of the assignee thereof, his executors, or administrators, if such assignee has used diligence, by the institution and prosecution of a suit against the maker of such instrument, or against his heirs, executors, or administrators, for the recovery of the money or property due thereon, or damages in lieu thereof; but if the institution of such suit would have been unavailing, or the maker had absconded or left, or was absent from the State when such assigned instrument became due, or absconds within twenty days thereafter, such assignee, his heirs, executors, or administrators, may recover against the assignor, or his heirs, executors, or administrators, as if due diligence by suit had been used. By "due diligence" shall be understood the institution of suit within sixty days after the maturity of the obligation.

Historical: Rev. St. 1887, Sec. 3601.

Cited: *Murphy v. Bartsch* (1890) 2 Ida. 636; 23 Pac. 82.

TITLE 14

NUISANCES

Chapter

1. General provisions.
2. Public nuisances.

Chapter

3. Private nuisances.

CHAPTER 1.

GENERAL PROVISIONS.

Section

3656. Nuisance defined.
3657. Public nuisance.
3658. Private nuisance.
3659. When not a nuisance.

Section

3660. Liability of successive owners for continuing nuisance.
3661. Abatement does not preclude action.

Nuisance Defined

Sec. 3656. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal or basin, or any public park, square, street, or highway, is a nuisance.

Historical: Rev. St. 1887, Sec. 3620.

California Legislation: See Civ. Code 1872, Sec. 3439; "bay" inserted after "river", line 5; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Similar provision in criminal law: Sec. 6910.

What Constitutes a Nuisance: When one constructs a ditch across a public street in such way as to render the

street unsafe or inconvenient for travel, and maintains the same without a bridge, he is guilty of maintaining a nuisance. *City of Lewiston v. Booth* (1893) 3 Ida. 692; 34 Pac. 809.

The herding of a large band of sheep near the homes of settlers, thereby creating an offensive smell, is a nuisance. *Sweet v. Ballentyne* (1902) 8 Ida. 431; 69 Pac. 995.

Public Nuisance.

Sec. 3657. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Historical: Rev. St. 1887, Sec. 3621.

California Legislation: Similar: Civ. Code 1872, Sec. 3480; same as amended: Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Booms or weirs so constructed as to prevent passage of logs constitute a public nuisance. Sec. 873. Maintenance of a public nuisance a misdemeanor: Sec. 6912.

Private Nuisance.

Sec. 3658. Every nuisance not included in the definition of the last section is private.

Historical: Rev. St. 1887, Sec. 3622.
California Legislation: Same: Civ.

Code 1872, Sec. 3481; Deering's Code, ib.; Kerr's Code, ib.

When Not a Nuisance.

Sec. 3659. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

Historical: Rev. St. 1887, Sec. 3623.

California Legislation: Same: Civ.

Code 1872, Sec. 3482; Deering's Code, ib.; Kerr's Code, ib.

Liability of Successive Owners for Continuing Nuisance.

Sec. 3660. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

Historical: Rev. St. 1887, Sec. 3624.

California Legislation: Same: Civ.

Code 1872, Sec. 3483; Deering's Code, ib.; Kerr's Code, ib.

Abatement Does Not Preclude Action.

Sec. 3661. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

Historical: Rev. St. 1887, Sec. 3625.

California Legislation: Same: Civ.

Code 1872, Sec. 3484; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 2.

PUBLIC NUISANCES.

Section	Section
3662. Not legalized by prescription.	3666. Abatement by public body or officer.
3663. Remedies.	3667. Abatement by private person.
3664. Indictment or information.	
3665. Action by private person.	

Not Legalized by Prescription.

Sec. 3662. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Historical: Rev. St. 1887, Sec. 3630.

California Legislation: Same: Civ.

Code 1872, Sec. 3490; Deering's Code, ib.; Kerr's Code, ib.

No lapse of time can give a prescriptive right to maintain a nuisance. *City of Lewiston v. Booth* (1893) 3 Ida. 692; 34 Pac. 809.

Prescriptive Right Not Acquired:

Remedies.

Sec. 3663. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

Historical: Rev. St. 1887, Sec. 3631.

"Or information inserted on the authority of Laws 1889, 125, Sec. 4 (Code Sec. 7658).

California Legislation: Same: Civ.

Code 1872, Sec. 3491; Deering's Code, ib.; Kerr's Code, ib.

Application: This section makes no distinction as to the remedy to abate nuisances which are a crime per se and those which are not such a crime. *Redway v. Moore* (1892) 3 Ida. 312; 29 Pac. 104.

Indictment or Information.

Sec. 3664. The remedy by indictment or information is regulated by the Penal Code.

Historical: Rev. St. 1887, Sec. 3632. "Or information" inserted on the authority given in the note to the preceding section.

California Legislation: Same: Civ. Code 1872, Sec. 3492; Deering's Code, ib.; Kerr's Code, ib.

Action by Private Person.

Sec. 3665. A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

Historical: Rev. St. 1887, Sec. 3633.

California Legislation: Same: Civ. Code 1872, Sec. 3493; Deering's Code, ib.; Kerr's Code, ib.

Private Actions: A private person may sue to abate or restrain the continuance of a public nuisance, provided he alleges and shows that such nuisance is especially injurious to himself. Thus a person whose property is rendered undesirable as a residence and thereby depreciated in value because of the maintenance of a house of prostitution in the neighborhood, may sue to enjoin the continued maintenance of the same as a nuisance. *Redway v. Moore* (1892) 3 Ida. 312; 29 Pac. 104. A private person who is especially injured by the maintenance of obstruction in a navigable

river may sue to abate the same. *Small v. Harrington* (1904) 10 Ida. 499; 79 Pac. 461. But a reasonable obstruction in a navigable stream, which merely impairs navigation but does not destroy it, cannot be enjoined at the suit of a private person. *Ib.*

Same—Pleading: A private person who sues to abate a public nuisance, must allege by positive averment in his complaint sufficient facts to show special injury to himself. *Redway v. Moore* (1892) 3 Ida. 312; 29 Pac. 104.

Res Adjudicata: The trial and acquittal of a party charged in criminal proceedings with the construction of a nuisance in a navigable stream, is not a bar to a civil action to enjoin the nuisance. *Small v. Harrington* (1904) 10 Ida. 499; 79 Pac. 461.

Abatement by Public Body or Officer.

Sec. 3666. A public nuisance may be abated by any public body or officer authorized thereto by law.

Historical: Rev. St. 1887, Sec. 3634.

California Legislation: Same: Civ.

Code 1872, Sec. 3494; Deering's Code, ib.; Kerr's Code, ib.

Abatement by Private Person.

Sec. 3667. Any person may abate a public nuisance which is specially injurious to him, by removing, or, if necessary, destroying, the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

Historical: Rev. St. 1887, Sec. 3635.

California Legislation: Same: Civ.

Code 1872, Sec. 3495; Deering's Code, ib.; Kerr's Code, ib.

CHAPTER 3. PRIVATE NUISANCES.

Section

3668. Remedies for private nuisances.

3669. Abatement: When allowed.

Section

3670. Same: When notice is required.

Remedies for Private Nuisances.

Sec. 3668. The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

Historical: Rev. St. 1887, Sec. 3640.

California Legislation: Same: Civ. Code 1872, Sec. 3501; Deering's Code, ib.; Kerr's Code, ib.

Cross Reference: Actions for nuisance: Sec. 4529.

Abatement, When Allowed.

Sec. 3669. A person injured by a private nuisance may abate it

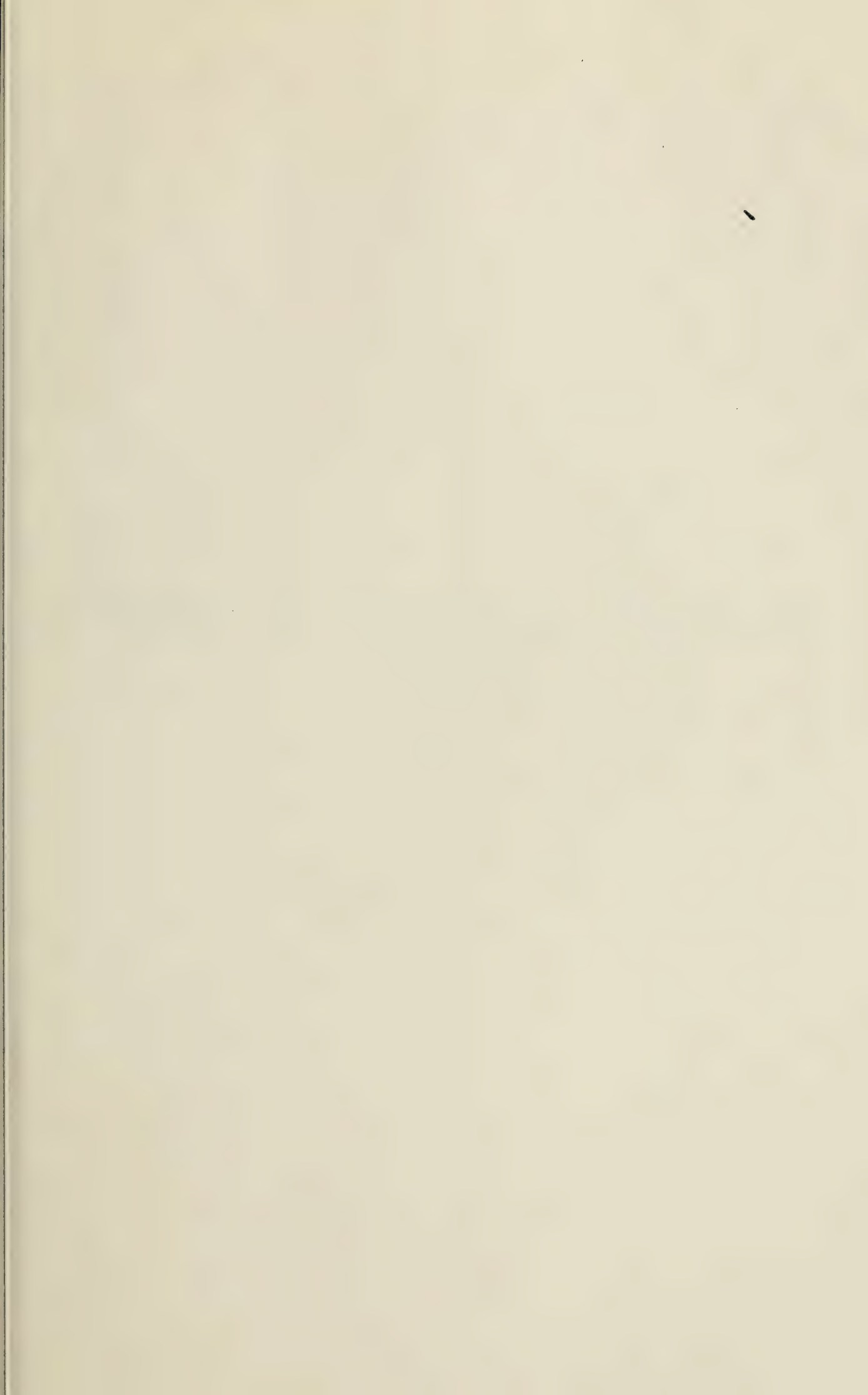
by removing, or, if necessary, destroying, the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

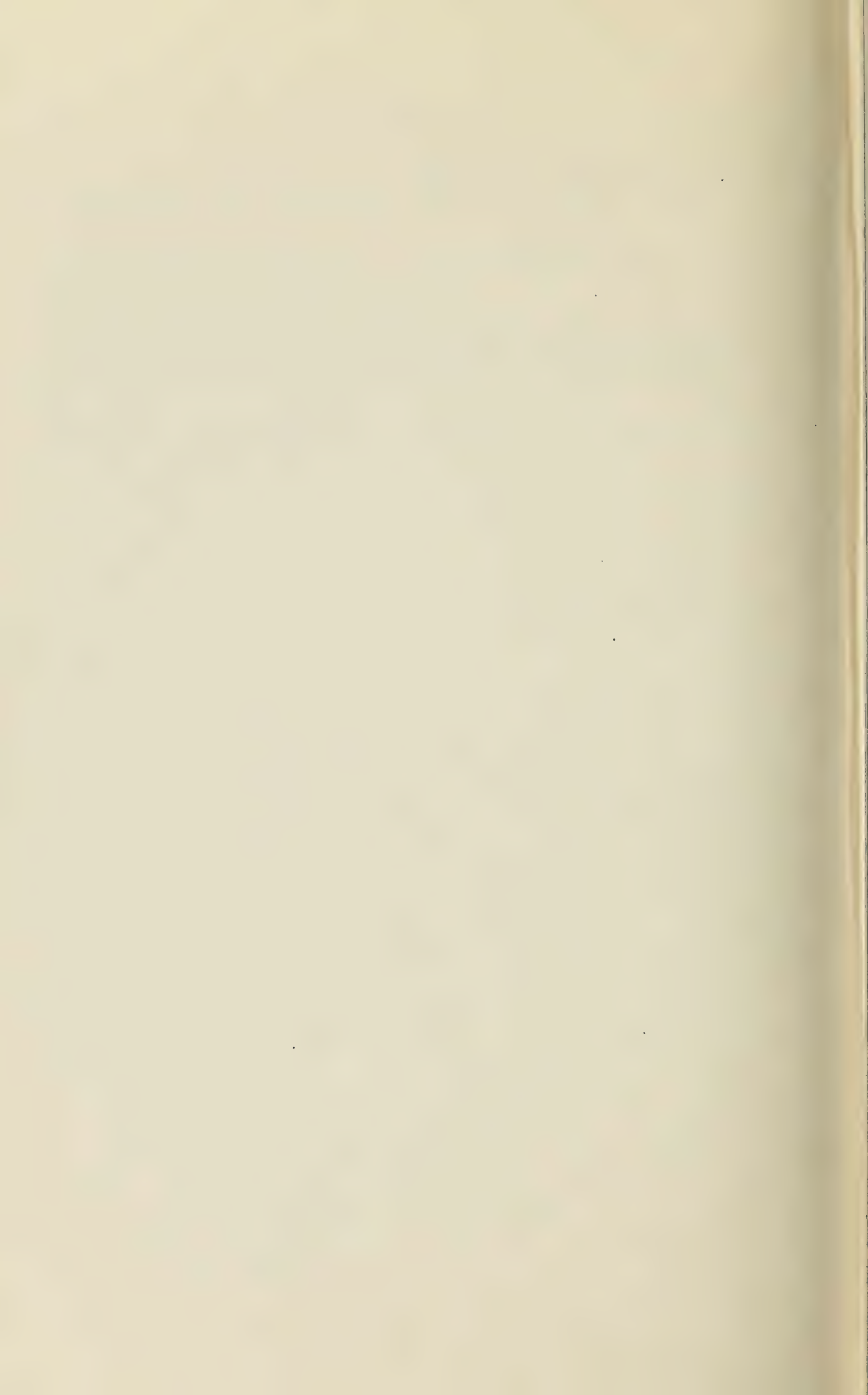
Historical: Rev. St. 1887, Sec. 3641.		Code 1872, Sec. 3502; Deering's Code,
California Legislation: Same: Civ.		ib.; Kerr's Code, ib.

Same: When Notice Is Required.

Sec. 3670. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

Historical: Rev. St. 1887, Sec. 3642.		Code 1872, Sec. 3503; Deering's Code,
California Legislation: Same: Civ.		ib.; Kerr's Code, ib.





INDEX TO POLITICAL AND CIVIL
CODES

INDEX TO POLITICAL AND CIVIL CODES

[This index is a condensation of so much of the General Index contained in Volume 2 as pertains to the Political and Civil Codes. Because of the bulk of this volume it has been found impossible to duplicate the General Index, or even to completely duplicate such portions thereof as apply to these Codes, as was originally intended. Therefore, this index is topical rather than sectional, classifying the sections only under their main topical heads, avoiding duplication, and "lumping" under a single line, the subject matter of an entire chapter or article, wherever practicable. Under the longer and more involved headings, as "Elections," "Negotiable Instruments," "Roads," "Schools," etc., the full index is preserved. The use of the General Index in Volume 2, in preference to this one, is recommended when both volumes are at hand.]

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